

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1046 of 2017

In
Civil Writ Jurisdiction Case No.16449 of 2010

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Md. Shamimul Haque, S/o Late Md. Ishaque Ansari, Resident of Village- Khirodharpur, P.O.- Fatuha, P.S.- Khusrupur, District- Patna. President of the Managing Committee of Wakf No.29, Kurtha, Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The District Magistrate, Patna.
3. The Additional Collector, Patna.
4. The Deputy Collector Land Reforms, Patna City, District- Patna.
5. Sub-Divisional Officer, Patna City, District- Patna.
6. Circle Officer, Khusrupur, Khusrupur Block, Khusrupur, District- Patna.
7. Officer-in-Charge, Khusrupur, Police Station, District- Patna.
8. Circle Inspector Khusrupur, Circle Officer, District- Patna.
9. Chairman, Bihar State Sunni Wakf Board IInd Floor, Haj Bhawan, 34- Ali Imam Path, Harding Road, Patna-1.
10. Chief Executive Officer, Bihar State Sunni Wakf Board IInd Floor, Haj Bhawan, 34- Ali Imam Path, Harding Road, Patna-1.
11. Anjani Kumar Sinha, S/o Late Awadh Prasad, Resident of Village- Ishopur, P.S.- Khusrupur, District- Patna. at present residing at Mohallah, Rajendra Nagar, Road No.6A, P.S.- Kadam Kuan, Town and District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shabbir Ahmad, Advocate
For the Respondent Board:	:	Mr. Helal Ahmad, Advocate
	:	Mr. Vikash Kumar Shukla, Advocate
For the State	:	Mr. Asif Kalim, AC to AAG 12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-10-2018

1. Feeling aggrieved and dissatisfied with the



impugned judgment and order passed by the learned Single Judge dated 20.06.2017 passed in C.W.J.C. No.16449 of 2010 by which the learned Single Judge has disposed of the said writ petition, respondent No.11 has preferred the present Letters Patent Appeal under Clause 10 of the Letters Patent.

2. The facts leading to the present Letters Patent Appeal, in nut shell, are as follows:

2.1 That the appellant herein-original respondent No.11 was dispossessed from the disputed lands in question. The Circle Officer, Khusrupur by order dated 23.8.2010, passed in Misc. Case No.8/10-11, recommended to cancel the Jamabandi standing in the name of the original writ petitioner's mother Kamla Kumari (deceased now). However, as the original writ petitioner was dispossessed illegally and without following any procedure under the law and on the basis of the oral instruction/order of the S.D.O., Patna City on 25.8.2010, the original writ petitioner preferred C.W.J.C. No.16449 of 2010.

2.2 The original writ petitioner initially prayed for the following reliefs:

- (i) To quash the order dated 23.08.2010 passed by Circle Officer, Khusrupur (Respondent No. 6) in Miscellaneous Case No. 08/10-11 where by and where under the Circle Officer, Khusrupur has erroneously recommend to cancel the



Jamabandi standing in the name of Petitioner's mother Kamla Kumari now deceased bearing Jamabandi No. 291 situated at Mauza Kurtha, Thana No. 123 area of 2.84 Acres of land.

(ii) To quash the order of handing over the charge of the land of the petitioner dated 25.08.2010 on the basis of oral order of S.D.O., Patna City (Respondent No. 5) and Respondent No. 6,7,8 and 11 illegally trespassing into the land of the petitioner and hand over the charge to one Shamimul Haque (Respondent No. 11)

(iii) To quash the notice dated 31.08.2010 issued under the signature of S.D.O., Patna City/DCLR, Patna City (Respondent No. 4) in Miscellaneous Case No. 08/10-11.

(iv) To restore the possession of the land of the petitioner by the Respondents Authorities at once.

3. At the time of hearing of the writ petition, the petitioner restricted the relief in terms of relief Nos.(i) and (iv) only, i.e. with respect to dispossession from the disputed lands in question.

3.1. It was the case on behalf of the original writ petitioner that he has been dispossessed from the lands in question without following any due procedure prescribed under the law and solely on the basis of the oral order of the S.D.O., Patna City.

3.2 It was the case on behalf of the respondent State authorities that the disputed lands were found to be Waqf



property and the name of the mother of the petitioner was wrongly entered in the revenue record and the order of creating Jamabandi in the name of the mother of the petitioner was passed illegally.

3.3 It was the case on behalf of the respondent State authorities that the Waqf Board sent a requisition to the competent authority for cancellation of the Jamabandi which was recorded in favour of the mother of the writ petitioner and restoration of the possession of the Waqf Board over the disputed lands and, thereafter, the State authorities instituted a case for cancellation of Jamabandi recorded in the name of the mother of the petitioner to the concerned authority, but, in the meantime, the original writ petitioner started construction over the disputed lands and thereafter at the direction of the S.D.O., Patna City, the Circle Officer, Khusrupur along with police officers went to the disputed lands and stopped the original writ petitioner from making any construction over the disputed lands and, consequently, the possession of the disputed lands was taken from the original writ petitioner and possession of the Waqf Board over the disputed lands was restored. It was also the case of the respondent State authorities that on the basis of recommendation sent by the Waqf Board, the miscellaneous case



was instituted and the original writ petitioner was noticed, but he avoided to responded to the said notice and, lastly, the recommendation for cancellation of the Jamabandi recorded in the name of the mother of the original writ petitioner was made.

3.4. Learned counsel appearing on behalf of the original respondent No.11-appellant herein also submitted that the disputed land is a Waqf property and once it was found that the Jamabandi in the name of the mother of the original writ petitioner was found to be illegal and thereafter it was recommended to cancel the Jamabandi and on the recommendation made by the Waqf Board the proceedings under the Waqf Act were initiated and that the original writ petitioner was found to be in illegal possession, the original writ petitioner was rightly dispossessed from the disputed lands in question which, as such, was/is a Waqf property.

3.5. However, as it was found that the original writ petitioner was dispossessed illegally and arbitrarily and without following any procedure as prescribed under the law and that solely on the basis of oral order passed by the S.D.O., Patna City, by the impugned judgment and order, the learned Single Judge has quashed and set aside the action of the respondents in dispossessing the original writ petitioner and has directed to



restore the possession of the original writ petitioner. The learned Single Judge also observed and made it clear that the original writ petitioner may challenge the recommendation for cancellation of Jamabandi in favour of the mother of the original writ petitioner in accordance with law.

3.6. Feeling aggrieved and dissatisfied by the judgment and order passed by the learned Single Judge, the original respondent No.11 has preferred the present Letters Patent Appeal.

4. Shri Shabbir Ahmad, learned counsel appearing on behalf of the appellant herein-original respondent No.11 has vehemently submitted that, in the facts and circumstances of the case and more particularly when the disputed lands in question is a Waqf property, the learned Single Judge has materially erred in directing the respondents to restore the possession to the original writ petitioner.

4.1. It is further submitted by Shabbir Ahmad, learned counsel appearing on behalf of the appellant, that the disputed lands in question was/is as such a Waqf property and earlier in the record of rights the same was recorded in the name of Syed Qyamuddin Abdul Ahmed, however, thereafter the Jamabandi was issued in the name of the mother of the original writ



petitioner illegally and by committing the fraud and, therefore, as such the Circle Officer, Khusrupur passed an order to recommend to cancel the Jamabandi which was in the name of the mother of the original writ petitioner. It is submitted that as the property in question was a Waqf property, the original writ petition was in illegal possession of the disputed lands in question and he was rightly dispossessed and, therefore, the learned Single Judge materially erred in directing the respondents to restore the possession to the original writ petitioner.

4.2. Relying upon the decision of the Hon'ble Supreme Court in the case of Chhedi Lal Misra (Dead) Through LRS Vs. Civil Judge, Lucknow & Ors, reported in (2007) 4 SCC 632, it is submitted by Shri Shabbir Ahmad, appearing on behalf of the appellant i.e. original respondent No.11 that once a Waqf is always a Waqf and, therefore, the learned Single Judge materially erred in restoring the possession of the disputed lands in question to the original writ petitioner.

4.3 Making above submission, learned counsel appearing on behalf of the appellant-original respondent No.11 challenged the impugned judgment and order passed by the learned Single Judge. Learned counsel appearing on behalf of



the original writ petitioner has supported the impugned judgment and order passed by the learned Single Judge.

5. Heard learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that as such by the impugned judgment and order the learned Single Judge has quashed and set aside the action of the original respondents in dispossessing the original writ petitioner after having found and observed that he was dispossessed from the disputed lands in question illegally and arbitrarily and without following any procedure as prescribed under the law and that solely on the basis of oral instruction/order passed by the S.D.O., Patna City.

6.1 It is the case on behalf of the appellant- original respondent No.11 that as the disputed lands in question is a Waqf property and, therefore, the original writ petitioner has no right, title or interest over the lands in question and, therefore, he was rightly dispossessed from the lands in question. However, it is required to be noted that as such at the instance of the Waqf Board, the proceedings are initiated with respect to the disputed lands in question, nothing is on record that any final order has been passed by the appropriate authority under the Waqf Act. Section 52 of the Waqf Act provides a detailed procedure to be



followed before passing any final order. Even it is the case on behalf of the learned counsel appearing on behalf of the appellant that as such the proceedings under the Waqf Act are pending and the notice has been issued, the original writ petitioner shall appear in the proceedings under the Waqf Act. Meaning thereby, the proceedings under the Waqf Act are still pending in which a detailed procedure under Section 52 of the Waqf Act is required to be followed. Therefore, the only question which is required to be considered is whether before passing any final order under the Waqf Act and/or before passing any order and/or without following any due procedure as required under the law, the original writ petitioner could have been dispossessed? It appears that the original writ petitioner was dispossessed solely on the basis of the recommendation by the Circle Officer to cancel the Jamabandi and thereafter on the basis of oral order passed by the S.D.O., Patna City. Merely because the Circle Officer recommended for cancellation of the Jamabandi with respect to disputed lands, which was in favour of the mother of the original writ petitioner, the original writ petitioner could not have been dispossessed and, that too, without any final order under the Waqf Act. At this stage, it is required to be noted that, right or wrong, there was an order of



Jamabandi in favour of the mother of the original writ petitioner and pursuant to the same, the petitioner and his mother were in possession. Even the Jamabandi is continued to be in the name of the mother of the original writ petitioner (now deceased) and even as per the respondents the Circle Officer only recommended to cancel the Jamabandi.

7. Under the circumstances, when it is found that the original writ petitioner was dispossessed illegally and arbitrarily and on the oral order passed by the S.D.O., Patna City and thereafter when the same has been set aside and the original respondents are directed to restore the possession of the lands in question to the original writ petitioner, it cannot be said that the learned Single Judge has committed any error.

8. In view of the above and for the reasons stated hereinabove, the present Letters Patent Appeal fails and the same deserves to be dismissed and is accordingly dismissed, however, without prejudice to the rights and contentions of the respective parties in the proceedings under the Waqf Act and/or any other proceedings and the present order be considered with respect to the illegal dispossession of the original writ petitioner.

9. The present Letters Patent Appeal is dismissed. No costs.



10. I.A. No. 5279 of 2017 stands disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

K.C.Jha/-

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