

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1558 of 2017

In

Civil Writ Jurisdiction Case No. 956 of 2012

- =====
1. The State Of Bihar.
 2. The District Magistrate, Patna.
 3. The Senior Superintendent of Police, Patna.
 4. The Sub-divisional Officer Sadar, Patna.
 5. The Officer-in-Charge, Kotwali Police Station, Patna.

.... Appellants

Versus

1. Md. Izhar, Son of Md. Islam, resident of Mohalla- High Court Majarsharif, P.O- G.P.O., P.S.- Kotwali, District- Patna- 800001.
2. The Bihar State Sunni Wakf Board through its Chief Executive Officer, namely Iftekhhar Hasan, Harding Road, Patna.
3. The Managing Committee of Hazarat Shah Syed Peer Murad Rahmatullah Allaih, High Court Majarsharif, Patna through its Secretary, Md. Irafil Anwar, Son of Late Asghar Ali @ Munna Mian, resident of Mohalla- Adalatganj, P.S.- Kotwali, District- Patna.
4. Ashique Khan, Son of Late Yasin Khan, resident of Naya Tola, Janipur Road, P.S.- Phulwarisharif, District- Patna.

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Dhirendra Kumar, AC to AAG-6

For the Respondent/s : Mr. Raj Narayan Mishra, Adv.
Mr. Manoj Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

6 27-08-2018 This appeal has been posted today for consideration of the office note recording failure of the appellants- State in ensuring compliance of the order passed by a Co-ordinate Bench on 26.6.2018 requiring them to file a substitution petition in respect of the deceased respondent no.4.



In normal course we would have granted time to the appellants to make good the defect and file a substitution petition but in the nature of the dispute which is sought to be raised by the State through this Letters Patent Appeal in the backdrop of the issue which was a subject matter of the writ petition filed at the instance of respondent no.1, we note that the appellants seek to raise such issues which is beyond the subject matter of contest. The State by this appeal raises issues on the right, title and interest of the writ petitioner over the piece of land in question but this issue was neither a subject matter of dispute before the Writ Court nor the appellant State raised any such issue before the Single Judge.

The writ proceedings together with the order passed by the learned Single Judge impugned in this appeal would confirm that an eviction notice issued by the Bihar State Sunni Waqf Board to the writ petitioner was put to challenge on statutory violation and which complaint was upheld by the learned Single Judge.

The State was a party respondent in the writ proceedings but did not choose to file counter affidavit or make any prayer in respect thereof nor the State came forward to raise any objection on the right, title and interest of the writ petitioner over the piece of land as raised here in this appeal.



As we have observed above, it is on waking from a slumber of more than 5 years and 265 days that the State endeavours to raise issue of title by submitting that the settlement made by Sunni Waqf Board in favour of the writ petitioner, is an act wholly without jurisdiction. This issue raised by the State as appellant before this Court was neither an issue before the learned Single Judge nor has been adjudicated upon. In fact the provisions underlying Section 83 of the Waqf Act, 1995 (hereinafter referred to as 'the Act') amply empowers the Tribunal constituted thereunder to examine such issue and if there was any grievance subsisting with the State Government on this issue, they should have first invoked the statutory remedy so available to them.

In our opinion, the present appeal is an abuse by the State of the process of the Court as it seeks to raise such issue of title which was never an issue of consideration before the learned Single Judge.

In view of the discussion above, we are satisfied to hold that this appeal is thoroughly misconceived and is dismissed accordingly.

The interlocutory applications are disposed of.

As we have observed above, if the State has reservations on the authority exercised by the Sunni Waqf Board over the land



in question, they are at liberty to take recourse to lawful remedy as
is available to them.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

U			
---	--	--	--

