

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.73 of 2018

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1. Md. Wasiur Rahman Son of LateHaji Motiur Rahman, Motawalli of Waqf Estate No.1052, Resident of Village Balha Maksudan, P.S. Pupri, Town & District Sitamarhi
 2. Haji Md. Sagheer Son of Late Haji Waris Imam, Resident of Mehsaul Chowk, P.S. Sitamarhi, District Sitamarhi

.... Petitioner/s

Versus

1. The Chairman, Bihar State Sunni Waqf Board, Haj Bhawan, Patna
2. The Bihar State Sunni Waqf Board, through its Chief Executive Officer, Haj Bhawan, Patna
3. The District Auqaf Committee, through its President at & P.O. Sitamarhi, District Sitamarhi
4. Md. Neyaz Ahmad Son of Sah Md. Hassan, Mauza Khalifa Bagh, P.O. Sitamarhi, P.S. Town, District Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Firoz Raza

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 18-09-2018

1. The petitioners filed this civil revision petition against the order dated 11.09.2017 passed in Waqf Appeal No.1 of 2017 by the Chairman and Members of Bihar Waqf Tribunal whereby the appeal of the petitioners against the registration certificate issued by the Chief Executive Officer, Bihar State Sunni Waqf Board, Patna dated 20.12.2016 with regard to the mosque standing on Plot No.125(ka) at Mehsaul Chowk, Thana No.5, Tauji No,8287, Khata No.14 as Masjid Ahle Hadis has been rejected.

2. The factual matrix of the case is that respondent No.4, Md. Neyaz Ahmad filed a petition for registration of the Waqf properties under the Waqf Act, 1995 in a prescribed form and on



such, Masjid Ahle Hadis situated at Mehsaul Chowk, P.S. & District- Sitamarhi were duly registered as Waqf property under Section 36 read with Section (3)(r)(i) (ii) of the Waqf Act, 1995 being Waqf registration No.2662 on the basis of the Waqfnama executed by Md. Jabir Hussain on 19.02.1986. Both the petitioners filed appeal being Waqf Appeal No.1 of 2017 against the certificate of the registration issued by the Chief Executive Officer, Bihar State Sunni Waqf Board on 20.12.2016 by which Chief Executive Officer certified that the mosque situated at Mehsaul Chowk, P.S. & District- Sitamarhi is Masjid Ahle Hadis. The details of the properties is mentioned as Mauja-Mehsaul Chowk, Thana No.5, Tauji No.8287, Khata No14 bearing Plot No.438(old), 299(new), 124, 125, 111 measuring area 4 decimals 1 decimal, 5 ½ decimals and 2 ½ decimals situated at Ward No.22 (old) 29(new) and the nature of Masjid is Masjid Ahle Hadis.

3. The case of the petitioners based on the facts that in the cadastral survey of year 1894, the Mosque in question is situated at Khewat No.7, name of owners was Sarfaraz Hussain and nature of land Gairmajarua, area 7 decimals, nature of land Mosque. The mosque is situated since there time immemorial and the Muslim community belonging from Iman Abu Hanifa Maslak having were managing the affairs of the Mosque. On 26/27.02.1920, Late Haji Jan Ali has created a Waqfnama by which he has made Waqf properties of



purchased land at Sitamarhi Khelafat Bag, Mehsaul Chowk and Maksudanpur, District Sitamarhi. The total area of the Waqf property was 4 bighas 11 kathas 4 dhurs. The waqif disclosed in his Waqfnama that income of Waqf property shall be used for Waqf which is situated adjacent to the land of Waqf property but the Waqf did not mention the plot number of Mosque situated at Mehsaul Chowk as well as Balha Maksudanpur. In the year 1961, at the instance of the then Mutwali namely Haji Md. Ismail, Waqf Estate No.1052 was registered in the Bihar State Sunni Waqf Board. Petitioner No.1 (who now withdrew his name from this writ petition on the ground that he does not wish to pursue the case, at present Mutwali of Waqf Estate No.1052) has been managing the Waqf estate and the Mosque in question with the help and co-ordination of petitioner No.2 who is the Secretary of the Mosque in question. The Mosque is always governed by the Muslim belonging to the sect of Abu Hanifa Maslak. During revisional survey, the Mutwali of Waqf Estate No.1052 was Haji Md. Ismail, son of Late Haji Jan Ali and the same was recorded in the revisional survey records. The further case of the petitioners is that as per registration certificate, Khesra No.125(ka) and (kha) were originally created from the land upon which the Mosque was situated and the same was carved out from Khewat No.7, area 7 decimals. The total area of 125(ka) and (kha) carved out from Khewat No.7 is 7



decimals.

4. Upon pleadings of the parties, the Bihar Waqf Tribunal, Patna formulated two questions for determination in the appeal:

(i) Whether the registration certificate issued by the C.E.O. dated 20.12.2016 under Section 36 of the Waqf Act is according to the provision of the Act?

(ii) Whether the registration related to the property of the Waqf created by Sheikh Jan Ali as per Waqfnama of Waqf Estate No.1052?

5. The Tribunal came to the conclusion that no lands of Waqf Estate No.2662 belongs to Waqf Estate No.1052. The Tribunal held that the Waqfnama executed by Sheikh Jan Ali is with regard to the Plot Nos.394, 395, 398, 399, total area 1 bigha 12 kathas 15 dhurs and plot Nos.500, 487, 457, 633, 634, total area 4 bigha 4 dhurs, the gross is 6 bigha 3 katha 19 dhurs including the house of waqif adjacent to the Mosque situated which is second Mosque under Waqf deed and the first Mosque was situated at Mauja Maksudanpur Balha Pargana Basotar, P.S. Pupri, Sub-division -Sitamarhi District Muzaffarpur and the second Mosque situated at Rajopatti near the house of waqif. The Tribunal also found that the Waqf Estate No.2662 registered on 20.12.2016 relates with the Plot No.438(old), 299(new) area 4 decimals under Ward No.22(old), Ward No.28(new) and Plot



No.124, 125, 111, area 4 decimals, 1 decimal, 5 ½ decimals and 2 ½ decimals and the same was registered as Masjid Ahle Hadis situated at Mehsaul Chowk, District-Sitamarhi. The Tribunal also held that no illegality was committed in issuance of registration certificate of Waqf Estate No.2662 dated 20.12.2016.

6. The petitioner being aggrieved by the order of the Tribunal passed in Waqf Appeal No.1 of 2017 on 11.09.2017 filed CWJC No.14622 of 2017 and a Bench of this Court held that in view of the provisions as contained in Section 83(9) of the Act any person aggrieved by the orders of the tribunal can invoke the revisional jurisdiction of the High Court and thus, the writ petition against the order of the tribunal is not maintainable in view of the efficacious and alternative remedy provided under the aforesaid provisions. Thereafter, the petitioners filed this civil revision petition.

7. Mr. Syed Firoz Raza, learned counsel for the petitioners assailed the order impugned passed by the Tribunal primarily on three grounds. Firstly, the Mosque situated on Khewat No.7 since before 1894 (cadastral survey) out of which Plot No.125(ka)(Masjid) and 125(kha) (rasta) are carved out which have been shown in the name of Sarfaraz Khan. Plot No.299(new) and Plot No.438(old) mentioned in Waqfnama of 19.02.1986 bequeathed by Md. Jabir Hussain, son of Late Abdullah speaks of Masjid Ahle Hadis but does not speak about



Mosque standing over Plot No.125(ka) which is a Mosque where Muslims of the locality offered Nawaz and Plot No.125(kha) is totally unconnected with the Waqfnama of Md. Jabir Hussain executed on 19.02.1986 and the same is the basis of registration of Waqf Estate No.2662, therefore, the registration of the Waqf Estate No.2662 with regard to the Mosque situated on Plot No.125(ka) is bad. Secondly, the registration of Waqf Estate No.2662 in the name of Masjid Ahle Hadis is illegal and no Waqf Board can be registered in the name of a sub-sect of any Sunni or Shiya Muslims. Thirdly, Bihar State Sunni Waqf Board while issuing registration certificate have acted in contravention of Section 36(4)(5)(7) and (8). Waqf Act, 1995 which requires that before registration of any property as a Waqf property, the requirement of sub-section (4)(5)(7) and (8) of Waqf Act, 1995 is sine-qua-non but no enquiry was held and, therefore, registration of Waqf Estate No.2662 dated 20.12.2016 is illegal.

8. Mr. Syed Firoz Raza, learned counsel for the petitioners with regard to the first point submits that Plot No.125(ka) area 5 ½ decimals has not been mentioned in the Waqfnama of Md. Jabir Hussain executed on 19.02.1986. Plot No.125(ka) and 125(kha) were carved out during revisional survey from Khewat No.7 area 7 decimals. In the cadastral survey, Khewat No.7 was recorded in the name of Sarfaraz and the Mosque was managed since long by the



locals who are predominant follower of Abu Hanifa Maslak but never attempted to denote the Mosque in the name of any sect for a particular stream of any subs-sects. It is further submitted that Jan Ali bequeathed his property in the year 1920 which is part of Waqf Estate No.1052 and the entire Waqf properties were entrusted with the management of the Mosque in question but surreptitiously the Mosque situated at Plot No.125(ka) as Masjid Ahle Hadis has been registered in the Waqf Estate No.2662 without any basis.

9. Mr. Ashhar Mustafa, learned counsel for the respondent No.4 has submitted that Late Jabir Hussain, son of Maulvi Abdullah is the waqif of Waqf Estate No.2662 and the registration of all the four plots in Waqf Estate No.2662 is on the basis of unimpeachable documentary evidence of revenue court. Plot No.124 and 125(ka), 1 decimal and 5 ½ decimals respectively were recorded in the revisional khatiyan in the name of Late Md. Jabir Hussain as Mutwali and the structure of Masjid Ahle Hadis existed thereon. The khatiyan of Revisional Survey Plot No.124 and 125 is Annexure A. Thereafter, Plot No.438(old), 299(new) area 4 decimals vested in Masjid Ahle Hadis by registered Waqfnama/sale deed executed by the waqif and his sister in the year 1981 and 1986 respectively. These properties were inherited by the waqif and his sister by way of inheritance. Part of the aforesaid land was sold by the waqif in the year 2004. Plot



No.111 is also vested in Masjid Ahle Hadis in view of the compromise arrived at in the year 2004 between Late Md. Abulais son of Jabir Hussain(Waqf's Son/Mutwali) and former M.P. of Sitamarhi Late Md. Anwarul Haque in Title Suit No.42 of 1986. It is further submitted that in the sale deed executed was way back on 22.07.1907. Neighbour of the said Mosque Late Bhaglu Khan indicated the name of Abdullah, father of waqif in the boundary of the sold land as Mutwali of the said Mosque. Jabir Hussain successfully contested Objection Case No.156/1970, 157/1970 under Section 9 of the Bihar & Orissa Municipal Act as Mutwali of the said Mosque against neighbour of the mosque namely, Bacchu Khan and Abdul Gafoor. Therefore, there is ample material to show that the Masjid Ahle Hadis situated on Plot No.124 and 125(ka) do not relate or have any connection with the Waqf Estate No.1052. Properties registered under Waqf Estate No.1052 are different and unrelated to the property in Waqf Estate No.2662.

10. From perusal of the records and submission of both sides as well as on perusal of the order of the Tribunal, no doubt remained that any property mentioned in Waqf Estate No.1052 is related to the properties of Waqf Estate No. S.I./ 2662. Admittedly, Sheikh Jan Ali bequeathed his property by creating Waqfnama in the year 1920. The land mentioned in Waqfnama of Sheikh Jan Ali in the



year 1920 describes the lands and the Masjid situated at Rajopatti. From perusal of Annexure H, it appears that the Mosque relating to Waqf Estate No.1052 was situated adjacent to the house of waqif or any of its property and the said Mosque was situated in the eastern part of N.H.77 whereas the Masjid Ahle Hadis which is situated on Plot Nos.124 and 125(ka) are situated towards west of the highways and no part of the lands of Waqf Estate No.1052 including the Masjid is registered by the Chief Executive Officer, Sunni Waqf Board in Waqf Estate No.2662. Therefore, I find no force in the submission of the learned counsel for the petitioner that beneficiary of Waqf Estate No.1052 was managing the Masjid situated at Plot No.125(ka) and the Tribunal has rightly concluded the findings that the Waqf Estate No.1052 is not at all related in any way with Waqf Estate No.2662.

11. Now, I take up issue nos.2 and 3 together as both are co-related with each other. Mr. Syed firoz Raza, learned counsel for the petitioner has submitted that Bihar State Sunni Waqf Board has committed jurisdictional error in granting certificate of Waqf Estate No.2662 in contravention of provisions mentioned in sub-clause (4), (5), (7) and (8) of Section 36 of the Act, 1995. The provision of sub-section (7) requires that authority shall hold an enquiry and the enquiry is sine-qua-non if no enquiry is held and in absence of such enquiry, the registration of Waqf Estate No.2662 stands vitiated. No



provision of Section 36 has been adhered to in issuance of registration certificate to the Waqf Estate No.2662 and the Board has mechanically registered Waqf Estate No.2662 and granted certificate. It is further submitted that Masjid Ahle Hadis situated at Plot No.125(ka) is registered in the name of sub-sect of Sunni Muslims. The registration of the Masjid in the name of any sub-sect such as Masjid Ahle Hadis is against the spirit of the religion. It has been held in the case of Md. Wasi and Anr. v. Bachchan Sahib & Ors., 1955 Allahabad Special Bench 68 that no injunction prohibiting any sect from offering prayer in Masjid can be issued.

12. Contending the submission of the learned counsel for the petitioner, Mr. Ashhar Mustafa, learned counsel for the respondent No.4 submits that the authority of the Board has followed all the procedures. Enquiry was held. The Circle Officer reported about the location of Masjid Ahle Hadis and other properties of Waqf Estate No.2662. Respondent No.4 was appointed Nayab Mutwali-cum-Secretary of Masjid in the lifetime of Late Md. Abulais and after death of Md. Abulais, respondent No.4 became the Mutwali of the Masjid. It is further submitted that description of the property sought to be registered in the Waqf Board by a particular name is prerogative of Waqf-donor and it has no bearing on the nature of Masjid. From perusal of Section 36 of the Waqf Act, it is written that the application



must contain the description of the Waqf properties sufficient for the identification thereof and, therefore, description of property is relevant and known as the name of Masjid. The donor has got prerogative to describe any property sought to be registered by any particular name and the name of the registration is limited for the purpose of description, identification of property and in no way denotes that the Masjid is meant for only sub-sects. The Mosque was known as Masjid Ahle Hadis for several decades and this is manifestly clear from the sale deed of the year 1981 and 1986 in favour of Masjid Ahle Hadis and there are many other documents on record to show that Mosque was known as Masjid Ahle Hadis.

13. In order to decide these two points, it would be relevant to reproduce Section 36 of the Waqf Act, 1995 which are as follows:

36. Registration.—

(1) Every wakf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli: Provided that such applications may be made by the wakf or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:—

(a) a description of the wakf properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the wakf properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

(e) the amount set apart under the wakf for—

(i) the salary of the mutawalli and allowances to the



individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the wakf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) In the case of wakfs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf: Provided that where there is no board at the time of creation of a wakf, such application will be made within three months from the date of establishment of the Board.

14. From bare perusal of the provisions as contained in

Section 36, it would appear that every Waqf whether created after or before the commencement of this Act shall be registered at the office of the Board. Mutwali of the Waqf shall file application for registration in the prescribed form. The proviso of sub-section (2) clearly says that such application may be made by the Waqf or his descendants or a beneficiary of the Waqf or any employees belonging



to the sect to which the Waqf belongs and on such application registration shall be made in such form and manner described in sub-section (3) of Section 36. Sub-section (4), (5) mandates requirement of application to be filled, signed and accompanied by the documents. Sub-section (7) says that on an application for registration, the Board, before registration of the Waqf, may hold such enquiry as it thinks fit in respect to genuineness and validity of the application and correctness of any particular therein and when the application is made by any person other than the person administered the Waqf property, the Board shall, before registering the Waqf, give notice of the application to the persons administering the property and shall hear him, if he desires to be heard. The authority under the aforesaid provision may hold any enquiry with regard to genuineness and validity of the application and correctness of any particular. Such enquiry is discretionary in the nature for the authority. The enquiry can be held only when the authority has any reason to suspect the genuineness and correctness of any document and, therefore, such enquiry is not mandatory in nature before registration of the Waqf property. It further appears from the facts that the Masjid Ahle Hadis was standing from before. The documents relating to the Masjid and the lands bequeathed in favour of Masjid show that the Masjid standing on Plot No.125(ka) was standing from before and the waqif



donated the properties of Plot No.438(old), 299(new), 124, 125, 111 in the name of Masjid Ahle Hadis. From perusal of the judgment of Md. Wasi and Anr. v. Bachchan Sahib & Ors.(supra), it appears that in that case, the plaintiff filed the suit for injunction against a sect of Shiya Muslims not to offer prayer or decorate for taking out procession from Masjid of Muharram and it was held that no sects of any Muslims can be restrained from using the Masjid saying Nawaz or other ceremony relating to the religion. In the present case, there is no fact to show that even if Masjid Ahle Hadis, which literally means the follower of the Prophet, is used for particular sub-sects of any Muslims. It is not the case of the petitioner that any sect or such persons belonging to his sects was restrained by the Mutwali of the waqf properties to say Nawaz in the Masjid. Therefore, I do not find any force in the submission of the learned counsel for the petitioner that the registration was held in respect to Waqf Estate No.2662 in the name of Masjid Ahle Hadis without holding enquiry is illegal.

15. Having considered the facts aforesaid, I do not find any jurisdictional error and material irregularity in the order impugned. Consequently, this civil revision petition is dismissed as devoid of any merit.

Saurabh/-

(Prabhat Kumar Jha, J)

AFR/NAFR	
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