

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20951 of 2018

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1. Sanjay Singh son of Ram Lakhan Singh, resident of Totra, P.S.-Sermera, District- Nalanda
 2. Ajay Kumar son of Raj Nandan Sharma, resident of Mohalla-Murarpur, P.S.-Laksi, District- Biharsharif
 3. Tara Devi wife of Late Munna Singh, resident of village-Kasuruddin Gani, P.S.-Labari, District- Nalanada
 4. Sunil Kumar son of Kameshwar Prasad, resident of village-Murarpur, Madarsa Gali, P.S.-Lahesi, District- Nalanda
 5. Sobha Devi wife of Dinesh Sao, resident of village-Tarora, P.S.-Fatuha, A/P Daniyama, District- Patna.
At present Mohalla-Murarpur, P.S.-Laheri, Biharsharif, District- Nalanda
 6. Janki Sharma son of Aklu Sharma, resident of Murarpur, P.S.- Laheri, Post-Biharshaif, District- Nalanda
 7. Raja Ram Prasad @ Sah son of Gobind Saw, Bharawapar, P.S.-Laheri, Post-Biharsharif, District- Nalanada

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Nalanda
2. The (S.D.O.) Sub Divisional Magistrate, Nalanda Collectariate at Biharsharif
3. Soghra Wakf Estate No.2
4. Bihar Wakf Tribunal, Patna (34 Ali Imam Path)

.... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Shilpi Keshri, Advocate
: Mr. Ganesh Sharma, Advocate

For the Bihar State
Sunni Wakf Board : Mr. Helal Ahmad, Advocate
: Mr. Vikash Kumar Shukla, Advocate

For the State : Mr. Saurabh Kumar, S.C.-19

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 02-11-2018



During the pendency of the writ petition, interlocutory application no.8451 of 2018 has been filed praying therein to stay the notice issued vide memo no.1845 dated 29.09.2018 passed by the Sub Divisional Office, Biharsharif, Nalanda in the light of the order dated 26.09.2017 passed by the Bihar Waqf Tribunal, Patna (for short 'the Tribunal') in Eviction Application No.04 of 2017 whereby and whereunder it has been directed by the Tribunal to the petitioner to remove encroachment within fifteen days and file a compliance application or else in the light of the order dated 26.09.2017 and letter no.3985 dated 26.12.2017 of the Chief Executive Officer, Bihar State Sunni Waqf Board (for short 'the Board'), the encroachment will be removed in accordance with law.

2. Learned counsel for the petitioners submitted that the land in question was purchased by the petitioners through different sale deeds and on the basis of the sale deed the petitioners had taken right, title and peaceful possession. A proceeding was initiated at the behest of the Board before the Tribunal. She contended that the proceeding initiated by the Board for removal of encroachment before the Tribunal in Eviction Application No.04 of 2017 was not sustainable in law as the land in question belongs to the petitioners, who are residing there for several years.

3. Per contra, learned counsel appearing for the



Board submitted that the writ petition against the final order of the Tribunal is not maintainable as an equally efficacious statutory remedy is available to the petitioners for redressal of their grievance under Section 83(9) of the Waqf Act, 1995. He contended that even otherwise the writ petition is bad in law as the final order of the Tribunal has not been assailed by the petitioners and they have simply assailed the show cause notice issued to them by the Sub Divisional Office, Biharsharif, Nalanda in the light of the order passed by the Tribunal.

4. I have heard learned counsel for the parties and carefully perused the record.

5. I find substance in the submission of the learned counsel for the respondent Board.

6. The petitioners had initially filed the writ petition against the show cause notice issued by the Tribunal. Subsequently, when the Tribunal finally decided the case against the petitioners, they did not challenge the same rather the interlocutory application has been filed before this Court seeking stay of the notice issued by the Sub Divisional Office, Biharsharif, Nalanda in the light of the final order passed by the Tribunal for removal of the encroachment. Moreover, this Court in the matter of *Md. Wasiur Rahman & Anr. vs. The State of Bihar through the Collector, Sitamarhi & Ors.* [2018(3)



PLJR 222] has categorically held that a petition under Articles 226/227 of the Constitution of India against the judgment and order passed by the Tribunal constituted under the Waqf Act, 1995 is not maintainable. The said view has been taken by this Court in the light of the provisions prescribed under Section 83(9) of the Waqf Act, 1995, which prescribes that no appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal. However, it makes a provision that a High Court may, on its own motion or on application of the Board or any person aggrieved, 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 and may confirm, reverse, or modify such determination or pass such order as it may think fit.

7. In view of the provision prescribed under Section 83(9) of the Waqf Act, 1995, when statutory prescription of remedy is revision against any decision or order passed by the Tribunal, a writ petition under Article 226 or 227 of the Constitution of India would not be maintainable.

8. Accordingly, the writ petition is dismissed with liberty to the petitioners that they may prefer revision, if so advised, against the order passed by the Tribunal before this Court in the same



subject matter. The interlocutory application also stands disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.11.2018
Transmission Date	-----

