

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1026 of 2018

In
Civil Writ Jurisdiction Case No.10760 of 2018

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1. Dr. Mahrukh Khan Wife of Late Dr. Nazimuddin Haider Khan resident of Village and P.O. and P.S.- Parsauni, District- Sitamarhi at present resident of Ashiana Nursing Home Pvt. Ltd. Ashiana More, P.S.- Rajiv Nagar, Patna-14.
 2. Dr. Farheen Khan Daughter of Late Dr. Nazimuddin Haider Khan resident of Village and P.O. and P.S.- Parsauni, District- Sitamarhi at present resident of Ashiana Nursing Home Pvt. Ltd. Ashiana More, P.S.- Rajiv Nagar, Patna-14.

... .. Appellant/s

Versus

1. The State of Bihar through which Principal Secretary, Minority Welfare Department, Government of Bihar, Patna.
2. The Bihar State Sunni Wakf Board, through its Chief Executive Officer, 34 Harding Road, Patna.
3. The Chairman, Bihar State Sunni Wakf Board, 34 Harding Road, Patna.
4. The Chief Executive Officer, Bihar State Sunni Wakf Board, 34 Harding Road, Patna.
5. The Collector, Sitamarhi.
6. The Sub- Divisional Officer, Belsand Sub- Division, Sitamarhi.
7. The Deputy Collector Land Reforms, Belsand Sub- Division, Sitamarhi.
8. The Circle Officer, Parsauni Block, Sitamarhi.
9. Mr. Tarique Anis Khan Son of Late Anisuddin Khan resident of Village and P.O. and P.S.- Parsauni, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mahesh Narayan Parbat, Sr. Advocate Mr. Ved Prakash Srivastva, Advocate
For the State	:	Mr. Niraj Kumar Sinha, AC to PAAG -2
For the Waqf Board	:	Md. Helal Ahmad, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2019

Heard learned Senior Counsel for the appellants
and the learned counsel for the Wakf Board as well as learned



counsel for the State.

2. This appeal questions the correctness of the judgment of the learned Single Judge dated 12th of July, 2018 in C.W.J.C. No. 10760 of 2018, whereby the petition preferred by the petitioners has been dismissed on the ground of alternative remedy being available to the petitioners to approach the Wakf Tribunal for the redressal of their grievances.

3. Having heard learned counsel for the parties, we are entirely in agreement with the view expressed by the learned Single Judge, but we may briefly add that the argument of the learned counsel for the appellants appears to be both in relation to the appointment of the Mutawalli of the wakf as also with regard to the retention of two rooms, the locks whereof have been called upon to be removed and possession being delivered to the Mutawalli of the Wakf.

4. The dispute appears to have arisen after the respondent no. 9, Tarique Anis Khan came to be nominated as the Mutawalli. From the record, it appears that the Chief Executive Officer of the Bihar State Sunni Wakf Board issued directions on 20th December, 2013 calling upon the petitioner no. 1 informing her that the Mutawalli has intimated that the wakf building has to be managed and for that purpose the



petitioner who has locked two of the rooms and is utilizing the same as a Guest House should be asked to open the locks and handover possession of the said rooms. The communication of the Chief Executive Officer contained in Annexure- 10 is extracted hereinunder :-

“BIHAR STATE SUNNI WAKF BOARD

(CONSTITUTION BY GOVT.OF BIHAR UNDER WAKF ACT 1995)

34 Ali Imam Path (Harding Road), Haj Bhawan, Patna

Phone No. 0612-2230581, Fax+Phone 2213865

Website:- www.bsswb.org. E-Mail:- bsswboard@gmail.com

No. XV(AR)726/SWB/2013 1622 dated 20.06.2013

From:-

Imteyaz Ahmad Karimi

(B.A.S)

Chief Executive Officer,

Bihar State Sunni Wakfr Board, Patna

To,

Dr. Mahrukh Khan

Vill+P.O.- Parsauni (Belsand)

Dist.- Sitamarhi

Sub:- For opening the lock of Guest House of the Wakf Building of the Wakf Estate No. 726, Persauni.

Madam,

The Mutawalli of Wakf Estate No. 726 Mr. Tarique Anis Khan has informed this office by filing a petition that you have locked the two rooms of the wakf building which is in use as Guest House (Dining & Drawing room) by all the beneficiaries of the Wakf Estate.

In this regard it is informed to you that the said building is the wakf property registered with the Bihar State Sunni Wakf Board, Patna and no one has any right to do any act with the wakf property without the permission of the Board of Mutawalli.

You are informed that Tarique Anis Khan has been appointed as Mutawalli of the Wakf Estate No. 726 by the order of the Board vide resolution No. 2 dated 04.06.2013 and circulated vide office order No. 1622 dated 20.06.2013 and has got authority to manage the Wakf Estate and do the needful for the benefit of the Wakf Estate and the beneficiaries.



Nobody has any right to interfere in the management and working of the Mutawalli.

Due to the Locking of the Lock in the said guest rooms (Dining & Drawing room) by you. Mutawalli is finding difficulties in the management of the Wakf Estate.

You are therefore requested to hand over the key of the two rooms of the wakf building Locked by you to the Mutawalli Mr. Tarique Anis Khan as the earliest.

Chief Executive Officer
Bihar State Sunni Wakf Board, Patna”

5. It appears that this dispute was carried forward and ultimately C.W.J.C. No. 5368 of 2014 was filed by the petitioners in which directions were issued calling upon the Chief Executive Officer to pass an appropriate order in terms of the direction issued therein on 25.08.2017.

6. The Chief Executive Officer rejected the request of the petitioners informing the petitioner to handover possession to the appointed Mutawalli within 15 days on the ground that the petitioners had no right to continue to occupy the said two rooms.

7. Aggrieved by the said order, the writ petition giving rise to the present controversy has been filed where we find that the matter is also being contested by the daughter of the petitioner no. 1 who has been arrayed as petitioner no. 2. The background in which this dispute



appears to have arisen has been indicated in detail in the judgment of the learned Single Judge and, therefore, we do not propose to reiterate the said facts confining ourselves to the legal issues that have been raised.

8. Learned counsel for the appellants contends that if the appellants were being treated as unlawful occupants then they would fall within the definition of encroachers as defined under Section 3 (ee) of the Wakf Act, 1995. The same is extracted hereinunder :-

“encroacher” means any person or institution, public or private, occupying wakf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by *mutawalli* or the Board;”

9. Learned counsel contends that in terms of Section 54 of the 1995 Wakf Act whenever any such encroachment is reported, the Chief Executive Officer has to take an action in accordance with law and if he is satisfied that there is an encroachment then he has to apply before the Tribunal for possession of the land building encroached upon to the Mutawalli of the Wakf. This is



evident from sub- Section 3 of Section 54 of the 1995 Act which is extracted hereinunder :-

“ 54(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is [wakf] property and that there has been an encroachment on any such [wakf] property, [he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the *mutawalli* of the [wakf]”.

10. The Tribunal has thereafter to pass an order for reasons to be recorded therein either proceeding to order eviction or otherwise.

11. From the facts on record, we are of the considered opinion that this was not a case of encroachment inasmuch as, the appellants are virtually claiming their rightful claim of possession over the Wakf property and have also asserted that the property in question is not even part of the Wakf property. This therefore is clearly a dispute relating to the property of the wakf and which in our opinion has to be carried to the Tribunal in view of the



provisions of Section 83(2) of the 1995 Act extracted
hereinunder :-

“83(2) Any muttawalli, person interested in a [waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the [wakf]”.

12. Apart from this, we find from the writ petition that a relief of certiorari has been prayed for to quash the appointment of the respondent no. 9 as Mutawalli vide Resolution dated 4th of June, 2013. The power of appointment conferred on the Board under Section 32 (2)(g) is as follows :-

“32 (2) (g) to appoint and remove mutawallis in accordance with the provisions of this Act;”

13. According to Sub- section 3 of Section 32 any such direction or settlement if complained of by any aggrieved person has to be agitated by filing a suit before



the Tribunal.

14. Thus, in relation to both the reliefs the appropriate remedy on the facts of the present case is clearly available to the appellant-petitioners by approaching the Tribunal.

15. For the aforesaid reasons, we find that the order of the learned Single Judge is perfectly in consonance with law and does not require any interference subject to what has been stated above.

16. The appeal is accordingly dismissed with the said observations. The liberty has already been granted to the appellants to approach the Tribunal and, therefore, they are entitled to avail of the same relief in accordance with law.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20.07.2019
Transmission Date	

