

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1789 of 2017

In

Civil Writ Jurisdiction Case No.9143 of 2014

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1. Md. Shamim, Son of Late Md. Abdul Rajjak, Resident of Mohalla-Raja Bazar, Khajpura, Police Station-Airport, District-Patna.
 2. Jahan Ara Khatoon, Widow of Late Asghar Ali, resident of Adalatganj, Police Station-Kotwali, District-Patna
 3. Mokhtar Alam Saquib @ Md. Mokhtar @ Md. Mokhtar Alam, Son of Md. Mustafa, Resident of High Court Mazar Campus, Police Station- Kotwali, District-Patna.
 4. Md. Naushad Alam @ Naushad Alam, Son of Late Md. Rafique, Resident of Mohalla-Choudhary Tola, Raja Bazar, Near Petrol Pump, Police Station-Shastri Nagar, District-Patna.

... .. Appellant/s

Versus

1. The Presiding Officer, Bihar Waqf Tribunal, Patna.
2. The Bihar State Sunni Waqf Board, Haj Bhawan, 34, Ali Imam Path, Patna.
3. The Bihar State Sunni Waqf Board, through its Chairman, Haj Bhawan, 34 Ali Imam Path, Patna.
4. The Chief Executive Officer, Bihar State Sunni Waqf Board, Haj Bhawan, 34 Ali Imam Patna, Patna
5. The Principal Secretary, Minority Welfare Department, Government of Bihar, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Md. Shamimul Hoda, Advocate
For the State	:	Mr. Durgesh Nandan -AAG-14
		Mr. Jitendra Kumar, AC to AAG-14
For the Managing Committee :		Mr. Khursheed Alam, Advocate
		Mr. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 20-11-2019

Heard the parties.

In the present case, the challenge is to the order passed by the Sunni Waqf Board vide Memo No.177 dated 14.02.2014, which has been affirmed by the Bihar Waqf Tribunal, Patna vide



order dated 31.03.2014 passed in Waqf Appeal No.03 of 2013 by which the appellants have been treated to be encroachers on account of wrong entry as a tenant in the Waqf property as the lease has not been approved by the Sunni Waqf Board.

The claim of the appellants is that they were inducted as tenants on different dates by the Secretary and Joint Secretary of the Managing Committee and they have been paying rent without any default and they cannot be treated as has illegally been inducted as tenants of the shops pertaining to Waqf Estate No.663 which is called as High Court Mazar Waqf Estate, but the claim has been made by the respondents that at the relevant time Md. Israfil Anwar and Md. Mustafa, who had illegally become Joint Secretary and Secretary, allotted the shops to the aforesaid appellants by way of favour as they are closely related to the appellants. Mukhtar Alam (appellant no.3), who is the son of Mustafa, was the Secretary of the Managing Committee, has inducted him as a tenant. Jahan Ara (appellant no.2), who is the mother of Israfil Anwar was the Joint Secretary of the Managing Committee, inducted her as a tenant. Naushad Alam, who is own brother-in-law of Mustafa as well as maternal uncle of Israfil Anwar, all were inducted during the year 1999. The Managing Committee in which Israfil and Mustafa were members inducted appellants as tenant was not approved by the Sunni Waqf Board, later on, the Sunni Waqf Board was constituted, enquiry committee



found that the Committee comprising Md. Israfil Anwar and Md. Mustafa wrongly inducted all four persons, were found running shops of Waqf land without any authority and, accordingly, enquiry report was submitted before the C.E.O Waqf Board. A show cause under Section 54 of the Wakf Act was served upon the appellants. They filed joint reply, which the Waqf Board rejected and issued a requisition to S.D.O under Section 55 of the Wakf Act. Whereafter they approached this Court in CWJC No.6416 of 2008 and this Court directed, the Board after giving hearing to the parties, would take decision in accordance with law within a period of four weeks and in the meantime, they would not be disturbed. Accordingly, the writ petition was disposed of. Again a hearing has been given in which the Board considered the objection of the appellants and arrived to a finding that the lease was not approved by the Board, close relative of Secretary and Joint Secretary inducted them as tenants illegally and directed to remove the appellants from the shops within fifteen days. Same view has been taken in appeal, which has been found that the premises in which they were inducted on lease as has been claimed by them is not in consonance with the Rule 56 (3) of the Wakf Act which prescribes that any lease beyond three years without the approval of the Sunni Waqf Board is a nullity and does not create any right in their favour.



During argument, counsel for the appellants has not produced any material to show the lease of the shop which has been granted to them ever was approved by the Waqf Board as Rule 56 specifically put a restriction that any lease or sub-lease for any period exceeding three years of any immovable property of Waqf Board be void and of no effect.

The appellants have taken a plea that they have been paying rent and they are getting rent receipts, so they cannot be treated to be illegally inducted tenant and their rents are being received without any demur by the Sunni Wakf Board. Further it has been stated that even if they are presumed to be illegally inducted, but removal of encroachment should be in terms of Section 54 of the Wakf Board Act. Rule 46 of Bihar Wakf Rules, 2002 specifically provides that whenever the Chief Executive Officer on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is Wakf property and, which has been registered as such under this Act, he shall cause notice to be served upon encroacher specifying the particulars of properties under encroachment, calling upon him to file show cause on the specified date, as to why an order of removal from encroachment before the date so specified should not be passed and on consideration of objection if any received within time, he may pass an order for removal of the encroachment and delivery of



possession. Rule 46 of the Bihar Wakf Rules, 2002 specifically provides that the Chief Executive Officer, either on receiving any complaint or on his own motion, issue a notice in Form 52 and the notice shall be served either through a registered post with acknowledgment or by special messenger and after considering the show cause and objection if any received during the period specified and after conducting an enquiry in the manner prescribed under Rule 51, if the Chief Executive Officer is satisfied that the land, building, open space, or other kinds of property is a Wakf property and that there has been encroachment, illegal or unauthorized occupation on this property, he shall pass an order for removal of the encroachment. Rule 51 of Bihar Wakf Rules, 2002 prescribes the manner enquiry to be conducted as has been mentioned in Rule 46 thereof. Rule 51 stipulates that the Board may, either on an application received under Section 70 of the Act or on its own motion hold an enquiry/inspection or authorize any officer of the Board, any Officer of the District Administration or any person in this behalf to hold any inquiry into any matter relating to a Wakf and shall take such action as it thinks fit. Sub-rule (3) of Rule 51 prescribes that the Officer or person authorized by the Board under Section 71 of the Act shall issue notice in Form 56 and he shall call upon the person or persons concerned and after giving notice the enquiry would be



conducted in which opportunity of hearing will be given by way of written statement as well as oral and documentary evidence.

During argument, it has been submitted that since the enquiry has not been done in terms of Rule 46 read with Rule 51, the order passed by the Sunni Waqf Board as well as appellate authority is illegal. In support of this contention, he has placed reliance upon a decision in the case of ***Gopal Sah Vs. The Bihar Wakf Tribunal, Patna and Ors. reported in 2011 (4) PLJR 386***, whereas counsel for the other side has said that the enquiry was conducted not once only but twice and, accordingly, Md. S.I. Faisal, Special Secretary-cum-Director, Minority Welfare Department, Bihar, Patna conducted a thorough enquiry into the affairs of the Waqf including the tenancies created and the way the Waqf Estate was being managed and run and during enquiry, it was found that the so-called tenants have been inducted illegally and they are in unauthorized occupation and this order has been passed in the case of Md. Shamim and Ors. Vs. Presiding Officer, Bihar Waqf Tribunal in CWJC No.9143 of 2014 and the Committee has recorded that the appellant have been entered illegally, they do not have any right to induct a tenant.

Heard and considered the rival contention of the parties. During argument, emphasis has been given by the respondents about the nature of deed and induction as tenant. Admittedly, there is no approval of the Waqf Board as the provisions of Section 56



specifically provides that a lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect. So, in no specific term, it has been prescribed that lease deed must be approved by the Waqf Board in the event that the period of lease is more than three years. Admittedly, persons have been inducted from the year 1991, but the emphasis has been given by the appellants that the enquiry has not been conducted as per the procedure prescribed in Rule. It will be relevant to quote Section 54 of the Wakf Act, 1995.

“54. Removal of encroachment from wakf property.— (1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.



(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(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, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf”.

In Rules 46 and 51 of the Bihar Wakf Rules, 2002, the manner and method have been prescribed of holding enquiry and removal of the encroachment. Rule 46 prescribes that on perusal of the provision, it appears that the Chief Executive Officer on receipt



of complaint or on his own motion would serve the notice upon the encroacher to show cause to file reply and on consideration of the show-cause and after holding the enquiry in terms of Rule 51 and if the Chief Executive Officer is satisfied that the land, building, open space, or other kinds of property is a Wakf property and illegally been occupied would pass the order directing the encroacher for removal of the encroachment within ten days.

In the case of ***Gopal Sah Vs. The Bihar Wakf Tribunal, Patna and Ors. reported in 2011 (4) PLJR 386***, it has been held that enquiry is mandatorily required and if it is not done the decision suffers from illegality, but in the present case, the enquiry has been conducted as has been recorded by the Tribunal by the Md. Isteyaque Ahmad, President of Waqf Board Estate No.663 in which he has found large number of persons to be illegally occupied the property of the Waqf Board as well as the enquiry has been conducted earlier in terms of order passed in CWJC No.9143 of 2014 by Md. S.I. Faisal, Special Secretary-cum-Director, Minority Welfare Department, Bihar, Patna in which he has found that the induction in the Waqf Board is illegal.

In this view of the matter, the effort of the appellants that the enquiry has not been conducted does not find any force and the submission is rejected as the entry of the appellants as tenants is completely illegal without authority of law, *de hors* to the provisions of Section 56 of the Wakf Act, does not create any



right in favour of the appellants, that too has been given to their own near relatives itself speaks the manner appellants have entered into the premises.

Accordingly, we do not find any merit in the present appeal and the same is dismissed and the order of learned Single Judge is affirmed.

(Shivaji Pandey, J)

(Partha Sarthy, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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