

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.89 of 2019

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Md. Azad Alam Son of Late Md. Nezamuddin House No. 921, Paharpur,
Police Colony, Near Mazar Sharif, Anisabad, Patna- 800002.

... .. Petitioner/s

Versus

1.The Chief Executive Officer Bihar State Suni Waqf Board, Haj Bhawan,
Harding Road, Patna.

.....Applicant/Opposite Party.

2.Munchun Kumar s/o Shivam Mandal, Moharrampur, Shital Prasad Verma,
Near Glgulea Masjid, Bagarganj, Patna-800004.

.....Opposite Party No. 1/O.P. 2nd Set.

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Appearance :

For the Petitioner/s :Ms. Roona, Adv

For the Respondent no.1 :Md. Helal Ahmad, Adv & Mr. Vikas Kr Shukla, Adv

For the Respondent no. 2:Md. Khursheed Alam, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 15-11-2019

Heard learned counsel for the parties.

2. This civil revision application is directed against the order dated 03.04.2019 passed by Bihar State Waqf Tribunal, Patna (hereinafter referred to as the 'Tribunal') in Eviction Application No. 20 of 2017 passed by the Presiding Officer of the Tribunal by which the petitioner has been directed to vacate the land of Waqf Estate No. 663 within 45 days.

3. Petitioner was given notice in Form 52 under Section 54 of Waqf Act, 1995 by the Chief Executive Officer, Bihar State Sunni Waqf Board, Patna, alleging therein that Petitioner has encroached upon/taken illegal occupation over the Waqf property belonging to High Court Mazar, Waqf Estate No. 663, as detailed in notice and thereafter was asked to submit his



explanation within 15 days from the date of receipt of notice. The details of the encroached land is Circle No. 138, Plot No. 96, Ward No. 28, Areas measuring 22 x11.66 Sq. Ft bounded by Parti Zameen in East, west boundary wall of Patna High Court, North Md. Munna and South Md. Shah Nawaz.

4. Pursuant to this notice petitioner submitted his show cause reply on 13.09.2017 in which he has stated that he is not an encroacher rather tenant of the area mentioned in the notice for last many years. It has been further replied that he is in possession over the area mentioned in the notice since month of November-2013 as tenant and tenancy was created and granted by the managing committee of Waqf Estate No. 663 and since thereafter he is paying rent to the managing committee for which receipt has been granted by the managing committee of Waqf Estate No. 663 and there is valid electric connection running in his name on said land. It has been further stated that if any rent is due, he is willing to pay the same. It has lastly been stated that he is tenant and not encroacher.

5. A proceeding was initiated on the basis of joint report dated 06.09.2017 submitted by Md. Aslam, Incharge, High Court Mazar, Estate No. 663 and Saukat Ali Khan, Board Member of High Court Mazar, Estate No. 663, after making



enquiry of the shop situated towards Western Wall pursuant to the order dated 20.11.2017 of Patna High Court passed in CWJC No. 9143 of 2014. In the enquiry, it was found that adjacent to the Western Wall, Motor Garaze are being run without taking permission of the Board. Petitioner is unauthorized occupant as stated in the order passed by the Chief Executive Officer. In the order, it has been stated that Petitioner filed his show cause reply on 13.09.2017 and thereafter personal hearing was given to him on 26.09.2017. Petitioner pleaded before the Chief Executive Officer that he is tenant since long and tenancy was created and granted by the managing committee of the Board and he paid rent to the managing committee which also granted him receipts.

6. The Chief Executive Officer has observed that petitioner has not produced any document showing tenancy with the managing committee or the Board. The authority has further held that petitioner has admitted that there was no lease agreement with respect to land in question and the rent receipt was being granted by the Secretary without any approval from the Board. The authority has finally concluded that petitioner has occupied the land of Waqf estate No.663 by making temporary structure over the same but they never entered into



any lease agreement either with the managing committee of Waqf estate or with the Waqf Board, as such he has occupied the land of Waqf estate no.663 without any legal authority and as such he is encroacher under Section 3(ee) of the WAKF Act, 1995 and as such he is liable to be evicted.

7. Pursuant to said order, Chief Executive Officer of Bihar State Sunni WAKF Board, filed an application against the Petitioner under Section 54(3) of the Waqf Amendment Act, 2013 for his eviction. The Tribunal has held that Waqf property was earlier managed and looked after by office bearers and member of managing committee as constituted from time to time by the Waqf Board. It has been further stated in the order that the Tribunal pursuant to order dated 20.11.2017 passed by High Court in CWJC No. 9143 of 2014 initiated proceeding on the basis of joint report dated 06.09.2017 submitted by Incharge of Waqf Board Estate No. 663 with respect to the encroachment made adjacent to the western wall of the High Court where Motor Garage was being run by the encroachers without taking permission of the Waqf estate/Waqf board.

8. Petitioner filed his reply before the Tribunal stating therein that he is bonafide tenant duly inducted by the managing committee and eviction of any tenant can only be done by the



civil court and not by the Tribunal. Petitioner approached the managing committee of Waqf estate and got tenancy over the land for which eviction has been ordered. He used to pay rent of Rs. 12,000/- per annum and for which he was being granted receipts by the managing committee and thereafter having been granted tenancy by the managing committee, he applied for electric meter and accordingly electric meter was installed and thereafter Petitioner is paying the electricity bill to the South Bihar Power Distribution Company Limited. Petitioner has paid Rs. 12,000/- as rent to the managing committee for the period from January-2014 to January-2015 as Rs. 1000/- per month which was fixed rent and he was allotted Shop No. M/Garage Shop and is running his Garage Shop. Petitioner has never violated any terms of the agreement or declared defaulter by the managing committee as such he cannot be declared as encroacher. It has been further stated that no development of the land under dispute is proposed as such no purpose would be served by vacating the Petitioner from the suit premises. He is ready and willing to pay rent as agreed between the parties with the managing committee/ Waqf Estate.

9. The Tribunal has relied upon enquiry report conducted by Md. Aslam and Saukat Ali Khan authorized by Bihar State



Sunni Waqf Board in compliance of order passed by Patna High Court with respect to Waqf Estate No. 663 of Patna High Court, Mazarsharif. The enquiry Committee during the course of enquiry found that Petitioner has illegally constructed structure over the portion of the land on the basis of which present proceedings were drawn against Petitioner by issuance of notice dated 06.09.2017 as detailed above.

10. Pursuant to specific order of this Hon'ble Court passed in C.W.J.C. No.9143 of 2014 with regard to structure raised towards the Western Boundary wall of High Court, the same was inquired by committee constituted by the Bihar Rajya Sunni Waqf Board and it was found seven encroachers have constructed their garage towards the western wall of the High Court and there is direction by the High Court to remove such construction and pursuant thereto the Chief Executive Officer as well as the Waqf Tribunal has passed the order for removal.

11. Under such circumstances, this Court cannot permit them to continue there where there is specific direction of Hon'ble High Court to remove such construction made towards the western wall of the Patna High Court after making a full fledged enquiry in which petitioner was found as unauthorized occupant.



12. The learned counsel representing the Waqf Board was requested by this Court that if any alternative place can be given to the petitioner to run his garage and he has filed a counter affidavit stating that opportunity was granted to all such occupants to approach the Waqf estate for an alternative place but petitioner never approached the Waqf estate for alternative accommodation although many similar placed encroachers who approached the Waqf estate were provided alternative place on rent but at present no vacant space is left to accommodate petitioner.

13. Having considered the rival submission and materials available on record as well as perusing the order passed by the Chief Executive Officer of Waqf Board and the order passed by the Waqf Tribunal, this Court does not find any illegality or infirmity in the order, as such, the present civil revision petition is dismissed.

14. However, it does not appear that petitioner had forcibly occupied the place but was in permissive possession of the land and rent was also accepted and electric connection was provided over the land, as such, that part of order by which Chief Executive Officer was directed to realize the amount of damage from the petitioner @ Rs.2,000/- per day after 45 days



of statutory period is set aside subject to condition that petitioner would vacate the premises within 3 months from the date of passing of this order.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.12.2019
Transmission Date	NA

