

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.69 of 2018

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Md. Munir Ahsan @ Munir Hasan @ Munir Ahsan Son of late Shahzad Hussain @ Shahzadu Hussain, resident of Pathar Ki Masjid, Choudhary Tola More, Police Station- Sultanganj, District- Patna.

... .. Petitioner/s

Versus

The Bihar State Shia Waqf Board, 2nd Floor, Haj Bhawan, 34 Ali Imam Path, Harding Road, Patna, Police Station-Sachivalaya, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Md. Shamimul Hoda, Adv
For the Respondent/s	:	Mr.Khursheed Alam, Adv
	:	Mr.Syed Asgher Najmi, Adv

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 29-03-2019

Heard learned counsel for the parties.

2. This civil revision application, under Section 83(9) of the Waqf Act,1995, is against order dated 11.09.2017 passed in Eviction Application No.03 of 2016 by the Bihar Waqf Tribunal Patna, whereby the Tribunal held that the petitioner is encroacher and is in illegal possession of Waqf Estate No.5/Patna since long without any legal sanction. The Tribunal further held that Chief Executive Officer of Siya Waqf Board has rightly found, in his enquiry, that the petitioner herein is encroacher on the Waqf property. Order for recovery of Rs.5,000/- per day has also been passed, on failure, to vacate the property within 45 days.



3. The main contention of the learned counsel for the petitioner is that the enquiry report of the Chief Executive Officer as well as order of the Tribunal, both suffers from non-application of judicial mind and are in flagrant violation of the requirement of law.

4. Contention is that the Chief Executive Officer allegedly conducted an enquiry under Section 54 of the Waqf Act, 1995 read with Rule 46 of Bihar Wakf Rules 2002 and did not follow the mandates of Rule 51 while holding the enquiry, as such, the enquiry was itself vitiated in law. Moreover, the notice, which was issued to the petitioner during enquiry, a copy at Annexure-6, would reveal that the same suffers from vagueness of identity of the property. Therefore, unless the authority (CEO) was sure that from which property (Waqf property) the encroachment is to be removed, no order of removal of encroachment could have been passed. The petitioner herein in his show cause reply submitted to the Chief Executive Officer (at Annexure-10) specifically stated that details of the property as stated in the notice is vague and without mentioning area. The petitioner further put-forward his claim before the Tribunal which does not find mention in the enquiry report of the Chief Executive Officer dated 26.06.2014 and 05.10.2015 at Annexure- 6 series. The Chief Executive Officer



did not mention the documents on which the Shia Waqf Board relied to support its claim.

5. Thereafter, the Chief Executive Officer sent a letter to the petitioner on 03.11.2015 asking him to vacate the premise of the Waqf Board within ten days of notice. On failure by the petitioner, application under Section 54(4) of the Waqf Amendment Act, 2013 was filed before the Bihar State Waqf Tribunal which was registered as Eviction Application No.03 of 2016.

6. The case and claim of the Shia Waqf Board is that the property of Col. Kalbe Ali Khan Waqf Estate was Waqf property registered with Bihar State Shia Wakf Board as Waqf Estate No.05/Patna dated 07.07.1948 bearing Tauzi No.134, Khata No.59, Plot No. 729 and 739, Ward No.16 (Old) and 22 (New) situated near Pathar Ki Masjid, Choudhary Tola More, Police Station- Sultanganj, town and District- Patna. It is alleged that the petitioner is in illegal occupation of Waqf premise where there is an Imambara and Karbala/Sahan, where Manjlis are organized on Muharram and on other occasions. The petitioner was neither a tenant nor even paid any rent to the Waqf Board/ Committee.

7. The case and claim of the petitioner is that Late Nawab Syed Tajamul Hussain, Son of Late Khan Bahadur Nawab



Sarfaraz Hussain was original title holder of the land in question. He had made permanent settlement in favour of Late Shahzad Hussain @ Shahzadu Hussain, the father of the petitioner on 06.03.1352 Fasali (in the year 1945) in respect of 45 decimals of land in Plot No.739 and 46 decimals of land in Plot No.729 with specific boundary through Patta Hukumnama on receipt of Nazrana of Rs.25/-. The rent of Rs.5/- was waived on condition that the settlee from generation to generation shall serve Imambara and Kabristan. Therefore, apparently, the settled land was not part of the Waqf Property.

8. Learned counsel for the opposite party contends that a copy of the survey khatian produced as Annexure-7 to the reply to the counter affidavit would reveal that the Plot Nos.729 and 739, were in possession of Sarfaraz Hussain and there was Imambara and nature of the land is mentioned as Imambara, area 237 decimals and Sahan 45 decimals. At page 46, there is statement of Shia Waqf Estate and details of property which does not contain the referred plots as Waqf property rather there is mention of Holding No.131 and 130 which according to the petitioner is of some other person neither of the petitioner nor of the Shia Waqf Board and the entry is wrong one.



9. Section 54 of the Waqf Act,1995 empowers the Chief Executive Officer, either on receipt of complaint or on his own motion that there has been encroachment on any land etc of Waqf, he shall serve upon the encroacher a notice specifying the particulars of the encroachment and calling upon the encroacher to show cause, as to why, an order requiring him to remove the encroachment be not made.

10. Sub-section 3 of Section 54 requires that after considering the objection of the said encroacher, the Chief Executive Officer shall conduct an enquiry in such manner as may be prescribed.

11. Rule 46 of the Bihar Waqf Rules, 2002 read with Rule 51 thereof prescribes the manner of enquiry. Sub-Rule 3 of Rule 46 says that the enquiry shall be conducted in the manner prescribed under Rule 51. Sub Rule 4 of Rule 51 says that the Officer holding the enquiry shall give opportunity to all interested persons to be heard, and shall give an opportunity to file written statement and to adduce such oral and documentary evidence as they may think fit. The enquiry report submitted by the Chief Executive Officer, Bihar State Shia Waqf Board at Annexure-6 series dated 26.06.2014 and 05.10.2015 containing one page report does not reveal that the procedure prescribed above were followed.



Hence, apparently, serious prejudice was caused to the petitioner and order passed at Annexure-8 in pursuance of the aforesaid enquiry report by the Chief Executive Officer suffers from non-compliance of the mandate of law.

12. When the matter came up before the Bihar State Waqf Tribunal constituted under Section 83 of the Waqf Act the Tribunal was required to follow the mandate of Sub-section 5 and 6 thereof which reads as follows:

“83. Constitution of Tribunals etc.-(1).....

(2).....

(3).....

(4).....

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.”



13. Rule 71 of Bihar Wakf Rules,2002 provides procedure for hearing and disposal of the lis as follows:

“71. Hearing and Disposal-*Every application,suit or appeal filed before the Tribunal shall be heard and disposed off in accordance with the procedure set out for hearing of suits and appeal in the Code of Civil Procedure and the Bihar Civil Court Rules of the High Court of Judicature at Patna (Civil) 1968 or any other Rules framed thereunder by the Government.”*

14. The impugned order makes it clear that the Tribunal has not followed the procedure prescribed for deciding the civil suit. The Tribunal committed error in holding that the petitioner did not produce the original Hukumnama. Rather the petitioner was not given opportunity to produce the original though the petitioner filed photo stat copy thereof. The petitioner has produced the original before this Court for perusal. Hence, apparently, the petitioner is in possession of the original Hukumnama and there was no reason that he would not produce the original on being asked by the Tribunal. Apparently, the Tribunal has acted with material irregularity and illegality.



15. The impugned order would reveal that the Tribunal has not exercised its power according to law by following the procedures prescribed for deciding a civil suit i.e. collection of evidence of the parties, oral and documentary, and thereafter to record a reasoned order based on the evidences collected. Rather in a casual manner, the Tribunal has recorded a finding that the report of the Chief Executive Officer is acceptable.

16. Hence, in my view, the Tribunal has not acted according to law. The impugned order as well as order of the Chief Executive Officer suffers from gross illegality in not following the prescribed requirement of law. Therefore, both orders are hereby set aside and this civil revision application stands allowed.

17. However, it is made clear that it would be open for the Sia Waqf Board to proceed according to law, if so advised.

18. Since the impugned orders have been set aside, any action taken in pursuance of that order shall also be deemed as void ab initio.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	NA
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