

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8790 of 2021

Shankar Prasad son of Late Bhagwan Lal, resident of Mohalla- Sahebganj,
P.S.- Town Thana, Chapra, District- Saran.

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary Bihar, Patna.
2. District Magistrate Saran at Chapra.
3. Sub Divisional Magistrate Saran at Chapra.
4. Circle Officer Chapra Sadar.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Kamal Nayan Choubey, Sr. Advocate Mr. Ashok Kumar, Advocate Mr. Ashok Kumar Garg, Advocate Mr. Dineshwar Pandey, Advocate
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For the Bihar State
Sunni Waqf Board

:	Md. Helal Ahmad, Advocate	
For the State	:	Mr. Nutan Sahay, AC to AAG-12
For Intervenor	:	Mr. Prashant Kashyap, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

3 09-05-2022 The petitioner has approached this Court seeking quashing of a notice dated 09.03.2021, issued by the Circle Officer, Sadar Chapra under Section 54 of the Waqf Act (Act, for brevity), whereby the petitioner has been directed to remove encroachment from the land of Gulzar Waqf Estate 1372 bearing Holding No. 34/56 and 35/57 up to 16.03.2021.

I.A. No. 01/2021 has been filed bringing on record another notice issued on 19.03.2021, whereby removal of such encroachment has been directed to be removed by 25.03.2021.



Upon hearing Mr. Kamal Nayan Choubey, learned Senior counsel, it appears that the dispute relates only in relation to the Holding No. 35/57 (new) which according to him is indisputably equivalent to Holding No. 49 of Gulzar Waqf Estate No. 1326. It is the petitioner's case that earlier a proceeding was initiated before the Bihar Waqf Tribunal for eviction giving rise to E.A. No. 6/2014 with the filing of an application by the Chief Executive Officer, Bihar State Sunni Waqf Board against 18 opposite parties. The said proceeding eventually culminated into a final order passed on 28.02.2018.

The petitioner is relying on the following portion of the said order of the Tribunal dated 28.02.2018, in order to put forth his case that the plot in question having Holding No. 49 of Gulzar Waqf Estate was not made subject matter of eviction.

“In view of the above facts and the materials on record, I find that this eviction application has been filed by the Bihar State Sunni Waqf Board through CEO in respect of 3 Katta of land of Holding No. 48 and not 5 katta of land of Holding No. 49 of Gulzar Waqf Estate No. 1326 and as such the contention of the opposite parties that the matter is sub-judice before the Hon'ble High Court is not sustainable and the Bihar State Sunni Waqf Board had rightly and correctly initiated proceeding of encroachment against opposite parties and I find no irregularity and illegality in the order passed by the Bihar State Sunni Waqf Board through CEO and hence all the opposite parties are hereby declared encroachers and held liable to be evicted.”



Mr. Choubey, learned Senior Counsel, referring to the said observation made by the Tribunal, has contended that a plot in respect of which there is express opinion recorded by the Tribunal that it was not a subject matter for eviction, has also been mentioned in the impugned notice issued by the Circle Officer under Section 54 of the Act.

Our attention has been drawn to an order dated 06.04.2021 passed by this Court in Civil Revision No. 180 of 2018, which admittedly arises out of the said order passed by the Bihar Waqf Tribunal, Patna in E.A. No. 6 of 2014 dated 28.02.2018, which reads as under:-

“As jointly prayed for by the learned counsel for the parties, list this case on 30th April 2021 at 2:15 P.M. for final hearing.

In the meantime, the premises in question, which has been vacated by the petitioners and seal has been put on the locks, shall not be let out.”

Section 55 of the Waqf Act stipulates that where the person, order under sub-section 3 of Section 54 of the Act fails to remove any encroachment within the time specified in the order, the Chief Executive Officer of the Board may apply to the Sub-Divisional Magistrate within the local limits to whose jurisdiction the land, building, space or other property is situate for evicting the encroacher. It is the petitioner's case, as is evident from the



pleadings in the writ petition that the said plot No. 35/57 ought not to have been included for the purpose of eviction, in exercise of power under Section 54 read with Section 55 of the Act, in the light of the decision of the Tribunal.

In our opinion, in the facts and circumstances of the case, the petitioner could have approached either the Sub-Divisional Officer to inform him that the plot in question was not included for eviction, in the light of the order of the Tribunal or the Tribunal itself narrating the facts of the case to the extent that the plot which was not a subject matter of eviction in E.A. 6/2014 before the Tribunal has been included in the notice issued by the Circle Officer for the purpose of eviction. We have taken note of the fact that the petitioner was not a party in the proceeding before the Tribunal in E.A. No. 6 of 2014.

This application stands disposed of with the liberty to approach appropriate authority/forum as aforesaid.

The interlocutory application also stands disposed of.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

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