

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8952 of 2021

1. Md. Ali Son of Late Resident of Mohalla- Rambagh Kanhauli Bishnudutt, P.S.- Mithanpura, P.O.- Ramna, District- Muzaffarpur.
2. Md. Amirul Islam Son of Late Md. Suleman Resident of Mohalla- Rambagh Kanhauli Bishnudutt, P.S.- Mithanpura, P.O.- Ramna, District- Muzaffarpur.

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Department of Minority Welfare, Govt. of Bihar.
2. The Chief Executive Officer, Bihar State Sunni Waqf Board, Haj Bhawan, Hardinge Road, Patna.
3. The District Magistrate, Muzaffarpur.
4. The Sub Divisional Officer, Muzaffarpur East.
5. The Circle Officer, Mushari, District- Muzaffarpur.
6. The Station House Officer, Mithanpura, District- Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Asif Ali, Advocate Mr. Majid Mahboob Khan, Advocate
For the Respondents	:	Mr. Md. Helal Ahmad, Advocate (Waqf Board) Mr. Rajkishore Rai, G.P.-18

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 15-02-2022

This writ application has been filed seeking quashing of an order issued by memo No. 147 dated 14.01.2021 passed by the Chief Executive Officer, Bihar State Sunni Waqf Board ('the Board' in short), Patna in compliance of an order dated 05.04.2019 passed by the Bihar State Waqf Tribunal ('the



Tribunal' in short). Against the said order dated 05.04.2019, the petitioners have filed Civil Revision applications before this Court registered as C.R. No. 99 of 2019 and C.R. No. 94 of 2019 under the *proviso* to sub-section (9) of Section 83 of the Waqf Act, 1995 (hereinafter referred to as 'the Act'), which are pending. No interim order has been passed in the said Civil Revision Applications by this Court in relation to operation of the aforesaid order passed by the Tribunal.

2. There is a finding recorded by the Chief Executive Officer of the Board in an order dated 06.02.2017 (Annexure-2), whereby the petitioners have been declared to be in unauthorized occupation of the Kanhauli Mosque, which has been held to be a Waqf property dedicated by Haji Khuda Bux. It is worthwhile mentioning that Section 54 of the Act casts a duty upon the Chief Executive Officer of the Board, on receiving any complaint or on his own motion that there has been an encroachment of any land, building, space or other property which is a Waqf property and which has been registered as such under the Act, to put such encroachers on show cause notice, for removing the encroachment. Sub-section (3) of Section 54 reads thus, :-

“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 waqf property and that there has been an encroachment on any such waqf 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 waqf.”

3. The Chief Executive Officer passed the aforesaid order dated 06.02.2017 under Section 54(3) of the Act and sent all relevant documents to the Tribunal for grant of eviction order against the encroachers, including these petitioners. Sub-section (4) of Section 54 confers upon the Tribunal jurisdiction to make an order of eviction directing that the waqf property shall be evicted by all persons who may be in occupation thereof or any part thereof. The *proviso* to sub-section (4) of Section 54 allows the Tribunal to give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

4. On the application made by the Chief Executive Officer, under Section 54(3) of the Act, as noted above, the Tribunal has passed the aforesaid order dated 05.04.2019 under



Section 54(4) of the Act in Eviction Application No. 5 of 2017.

It is evident from the order of the Tribunal that the petitioner had participated in the proceeding before the Tribunal. Following is the operative portion of the order passed by the Tribunal:-

“Accordingly it is hereby ordered that the opposite parties being held as encroachers are directed to vacate the land in their illegal possession of waqf estate No. 1190 the detail of which given at the foot of the eviction application within 45 days from the day of affixture of the order and hand over the possession to managing committee or waqf Board failing which they shall be held liable to pay damages @ Rs. 2000/- per day till vacation. The C.E.O. is direction to affix the copy of this order at some conspicuous place of the waqf estate No. 1190 and after lapse of statutory period of 45 days evict the opposite parties from illegal possession of the properties of the waqf estate no. 1190 or authorised any persons/authority to evict the opposite parties and take possession and if the encroachers do not vacate within statutory period then the Board shall realise the amount of damages as stated above according to law.”

5. The petitioners have admittedly not removed the encroachments from the waqf property, though they have been held to be encroachers by Chief Executive Officer of the Board and the Tribunal subsequently, by a definite finding.

6. The Chief Executive Officer of the Board has



written a letter issued by memo No. 147 dated 14.01.2021, addressed to the Sub Divisional Officer, East Muzaffarpur, enclosing a copy of the order of the Tribunal with a request to remove the encroachment and hand over the possession of the waqf property to the Chairman/Secretary of the Managing Committee of Waqf. Further, the Circle officer, Mushahari has asked the petitioners and others to remove the encroachment, else the encroachments would be removed with the use of force and the amount spent on such removal shall be recovered from them.

7. Without obtaining any interim order of stay of the Tribunal's orders, during the pendency of the Civil Revision applications before this Court, the petitioners have filed the present writ application seeking quashing of the aforesaid letter dated 14.01.2021 of the Chief Executive Officer of the Board and the notice dated 15.03.2021 issued by the Circle Officer, Mushahari.

8. Mr. Asif Ali, learned counsel appearing on behalf of the petitioner has relied on the provision under sub-section (8) of Section 83 of the Act to contend that the said order of the Tribunal dated 05.04.2019 is in the nature of decree and execution of any decision of the Tribunal can be made only by a



Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908. He submits that as any order passed by the Tribunal is to be treated to be a decree as per Rule 73 of the Bihar Waqf Rules, 2012, the same can only be executed by the learned Munsif, in the territorial jurisdiction of which the disputed land is situate. He has accordingly submitted that the impugned action of the Chief Executive Officer of the Board and the notice issued by the Circle Officer for removal of encroachment are wholly unauthorized and illegal.

9. *Per contra*, Mr. Md. Helal Ahmad, learned counsel appearing on behalf of the Waqf Board, on the other hand has submitted that Section 54 of the Act deals with the procedure for removal of encroachment from Waqf property. He submits that there is clear finding recorded by the Board, after giving the petitioners an opportunity of hearing, that they are encroachers, whereafter an application was made under sub-section (4) of Section 54 of the Act to the Tribunal for making an order of eviction. He has submitted that sub-section (8) of Section 83 of the Act shall not apply for enforcement of an order for removal of encroachment from Waqf property in view of specific provision in this regard under Section 55 of the Act. He submits



that once an order is passed by the Tribunal under sub-section (4) of Section 54 of the Act to remove any encroachment and the encroacher omits or fails to remove such encroachment within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property, the Chief Executive Officer is authorized to refer the order of the Tribunal to the Executive Magistrate within local limits of whose jurisdiction, the Waqf property is situate for evicting the encroacher. He has submitted that the communication made by the Chief Executive Officer of the Board dated 14.01.2021, addressed to the Sub-Divisional Officer, who is an Executive Magistrate for removal of encroachment is, thus, in conformity with the provision under Section 55 of the Act. According to him, neither the letter of the Chief Executive Officer of the Board nor the notice of the Circle Officer suffers from any legal infirmity.

10. After having heard learned counsel for the petitioner and learned counsel representing the Waqf Board, we are of the view that this writ application is devoid of any merit. The submission made on behalf of the petitioner that an order passed under sub-section (4) of Section 54 of the Act by the Waqf Tribunal is required to be executed by a Civil Court in



accordance with the provisions under C.P.C. in view of Section 83(8) of the Act, in our opinion is totally misconceived. Section 54 of the Act clearly lays down a procedure for removal of encroachment from Waqf property. Section 55 of the Act, in our opinion, clinches the issue which reads as under :-

“55. Enforcement of orders made under section 54.—Where the person, ordered under sub-section (4) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may refer the order of the Tribunal to the Executive Magistrate within the local limits of whose jurisdiction the land, building, space or other property, is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.”

11. Section 55 of the Act, in no uncertain terms, lays



down the procedure for removal of encroachments where the person ordered under sub-section (4) of Section 54 fails to remove such encroachment within the time specified in the order. The order of the Tribunal was passed on 05.04.2019, asking the petitioners to vacate the land in their illegal possession of Waqf estate No. 1190 within 45 days from the date of fixture of the order and to hand over the possession to the Managing Committee or the Waqf Board. From the impugned letter dated 14.01.2021, it appears that in compliance of the order of the Tribunal, a copy of the order was affixed on the wall of the Waqf estate on 09.07.2019. The petitioners have omitted to remove the encroachments within the time specified by the Tribunal. In accordance with the provision under Section 55 of the Act, the Chief Executive Officer referred the order of the Tribunal to the Sub Divisional Officer, Eastern Muzaffarpur, who is the Executive Magistrate within the local limits of whose jurisdiction, the Waqf property is situate for evicting the encroachments. As required under Section 55 of the Act, an order has been made directing the petitioners to remove the encroachment and evict the encroachers from the land. The said provision permits taking such police assistance as may be necessary for the purpose of removal of encroachment in terms



of the order passed by the Tribunal under sub-section (4) of Section 54 of the Act.

12. In our considered view, Section 83(8) of the Act shall have no application when an action is taken for removal of encroachment from Waqf property in accordance with the provisions under Section 54 of the Act. Section 55 of the Act deals directly with the enforcement of the orders made under sub-section (4) of Section 54 of the Act. If the submission which has been advanced on behalf of the petitioner, that an order of the Tribunal for removal of encroachment is to be executed by a competent Civil Court in accordance with Sub-Section (8) of Section 83 of the Act is accepted, the provision under Section 55 of the Act shall become otiose.

13. The legislative intent is clear from the provisions under Section 54 and 55 of the Act which specifically deal with removal of encroachment from Waqf property and enforcement of an order passed for removal of Waqf property by the Tribunal.

14. Further, we do not approve the conduct of the petitioners by taking resort to writ jurisdiction when alternative remedy by filing Civil Revision has been availed by them before this Court, against the order of the Tribunal. The



petitioners have, in our opinion, misused the process of the Court. This application, therefore, deserves to be dismissed with cost.

15. This application is accordingly dismissed with a cost of Rs. 2000/- (Rupees Two Thousand Only) to be deposited in the account of the Bihar State Sunni Waqf Board within two months from today.

(Chakradhari Sharan Singh, J)

I agree.
Madhuresh Prasad, J:-

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	11.02.2022
Uploading Date	11.03.2022
Transmission Date	N/A

