

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.187 of 2017

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1. The Bihar Awami Cooperative Bank Ltd., through its Chairman, Head Office, situated in Wakf Market, Muradpur, P.S. Pirbahore, District – Patna.
 2. The Chairman, the Bihar Awami Cooperative Bank Ltd. Wakf Market, Muradpur, P.S. Pirbahore, District Patna.
 3. Tanweer Ahmad @ Tanweer, son of Late Md. Zakiuddin, General Manager, the Bihar Awami Cooperative Bank Ltd. Wakf Market, Muradpur, P.S. Pirbahore and District – Patna.

... .. Petitioner/s

Versus

1. Bihar State Sunni Wakf Board, through its Chief Executive Officer, the Bihar State Sunni Wakf Board, 34 Haj Bhawan, Ali Imam Path, Harding Road, Patna – 800001
2. The Chairperson, the Bihar State Sunni Wakf Board, 34 Haj Bhawan, Ali Imam Path, Harding Road, Patna- 800001
3. The Chief Executive Officer, 34 Haj Bhawan, Ali Imam Path, Harding Road, Patna – 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Abu Haider, Advocate
For the Respondent/s	:	Mr.Md. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 06-09-2022

Heard learned counsel for the parties.

This Revision Application is directed against the order dated 25.08.2017 passed in Eviction Application No. 5 of 2016 by Bihar Waqf Tribunal, Patna.

The Opposite Party Bihar State Sunni Wakf Board, through its Chief Executive Officer (in short ‘the Waqf Board’) preferred Eviction Application No. 5 of 2016 under Rule 48 (5) of Bihar Waqf Rules, 2002 read with Section 56 (3) of the Waqf Act, 1995 as amended vide Amendment Act, 2013 for grant of



eviction of the petitioner- The Bihar Awami Co-operative Bank Ltd. through its Chairman (in short 'the Bank') from the Waqf property and also for direction to deposit arrears of rent and current rent determined in fair rent proceeding by order dated 23.09.2015 passed by the Waqf Board under Section 48 of Bihar Waqf Rules, 2002 read with Section 56(3) of Waqf Act, 1995 as amended vide Amendment Act, 2013 as the petitioner Bank willfully and deliberately not complied the said order passed by the Waqf Board and occupied the Waqf property unauthorisedly, without paying the fair rent so fixed.

The objection under Section 83 and 85 of the Waqf Act, 1995 was filed on behalf of the Bank to the said Eviction Application stating that the Eviction Application filed by the Applicant is not maintainable as the Waqf Tribunal has no jurisdiction to try the eviction from the Waqf property. It was further stated that the Waqf Act does not provide for any proceeding before the Tribunal for determination of a dispute concerning the eviction of the tenant in occupation of a Waqf property. A suit seeking eviction of the tenant be filed only before the Civil Court and not before the Waqf Tribunal. Reliance was placed on the Judgment of Hon'ble Supreme Court in Faseela M. Vs. Munnerul Islam Madrasa Committee &



Anr. Reported in 2014 (3) BBCJ 52.

It was also stated that against the order dated 23.09.2015 (fair rent determination) the Bank filed CWJC No. 18120/15 before Patna High Court for quashing the said order since on that relevant period of time the Waqf Tribunal was not functioning.

The case of the Bank is that the Waqf Board cannot determined or enhanced the rent under the said provision of law and also till loan amount has been adjusted. Moreover, the Waqf Board is not justified to hold any enquiry for enhanced rent of the building under the occupation of the Bank and rent has been determined arbitrarily without giving opportunity to be heard.

Accordingly, the said order of fixation of rent @ Rs. 20 from Rs. 9 per sq. feet per month and direction to pay such rent from 01.08.2015 is illegal and arbitrary and contrary to the law particularly Waqf Act, 1995.

In reply filed by Waqf Board to the objection petitioner filed by the Bank it is stated that the eviction petition has been filed as per the provision of Waqf Act, 1995 and Bihar Waqf Rules, 2002.

It is further stated that the proper opportunity was given to the Bank which filed its reply on 01.09.2015 to the



notice issued under Rule 48 of Bihar Waqf Rules and the fair rent proceeding has been exhausted in accordance with law but the Bank deliberately chose not to pay the rent and also not availed the remedy provided to it under Rule 48 (4) of Bihar Waqf Rules, 2002 to challenge the order of the Waqf Board to the Tribunal.

On the objection petition under Sections 83 and 85 of the Waqf Act, the learned Tribunal vide order dated 11.05.2017 held that Eviction Application is not a suit and is well maintained before the Tribunal and cannot be decided by any Civil Court.

The Bihar Waqf Tribunal, Patna vide the impugned order dated 25.08.2017 given finding that loan amount taken for construction of building has been adjusted and satisfied and Bank is tenant on month to month basis and found no illegality in the order of fair rent fixation passed by the Waqf Board vide order dated 23.09.2015 and the Bank has not preferred appeal under Rule 48 (4) of the Bihar Waqf Rules against the said order. The Tribunal ordered the eviction of the Bank and also directed to issue certificate as public demand for recovery of arrear of rent vide the impugned order under challenge.

The main contention of the learned counsel for the



petitioner in the Revision is that the aforesaid Eviction Application is not maintainable as the same has to be filed only before the Civil Court concerned as held by the Hon'ble Supreme Court in various judgments. He has relied on the judgment of Hon'ble Supreme Court in Faseela M. Vs Munnerul Islam Madarsa Committee reported in 2014(3) BBCJ 52 (SC); AIR 2014 SC 2064 in support of his contention that the Suit for eviction to Wakf property is exclusively triable by the Civil Court.

The petitioner also relied upon the judgment of Hon'ble Supreme Court in Rajasthan Waqf Board Versus Devki Nandan Pathak and Others reported in 2017 (2) PLJR 463 (SC) and the judgment dated 29.03.2019 of Patna High Court passed in Civil Revision No. 69 of 2018 (Md Munir Ahsan @ Munir Hasan @ Munir Ahsan Versus The Bihar State Shia Waqf Board and judgment dated 20.12.2018 of Patna High Court in CWJC No. 12375 of 2015 (Badri Paswan Versus Masjid of Sunni Community) reported in 2019 (1) BLJ 518.

From perusal of the aforesaid judgments it appears that the said judgments have been passed relying on the judgment passed in Ramesh Gobindram Vs. Humayun Mirza Waqf reported in AIR 2010 (SC) 2897.



Learned counsel for the opposite parties submits that Waqf Act was amended by Amendment Act, 27 of 2013 and thereafter, it is well settled that eviction of tenant for determination of rights and obligation of the lessor, the Tribunal has jurisdiction.

The only question that arises for consideration in this revision is as to whether Eviction application in respect of Waqf property is maintainable before the Tribunal or in Civil Court?

The question of jurisdiction of Civil Courts to adjudicate upon disputes, for the determination of which special Tribunals are constituted under special statutes, specially in respect of Waqfs has been a vexed question.

The Waqf Act, 1995 provides for the setting up of Waqf Tribunals to consider questions and disputes pertaining to Waqf. Section 83 of the Waqf Act, 1995 provides for constitution of Tribunals etc. for the determination of any dispute, question or other matter relating to a Waqf or Waqf property under the Act. The words "Eviction of tenant or determination of rights and obligations of the lessor and the lessee of such property" were inserted in Sub-section (1) of Section 83, after the words "Wakf Property" by Amendment Act 27 of 2013.



Section 85 of the Waqf Act, 1995 provides bar of jurisdiction of Civil Court which reads as follows.

“85. Bar of jurisdiction of Civil Courts - No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf - Wakf property or other matter which is required by or under this Act to be determined by the Tribunal”.

The words, ‘Civil Court’ were substituted by the words “Civil Court, ‘Revenue Court’ and ‘other authority’ in Section 85, by Amendment Act 27 of 2013.

Thus, Act 27 of 2013 did two things. First it expanded the jurisdiction of wakf Tribunal even to cover landlord-tenant disputes and the rights and obligations of lessor and lessee. Second, the Amendment Act enlarged the bar of jurisdiction, to cover even Revenue Courts and other authorities.

A cumulative reading of Sections 86, 89 and 90 would show that the bar of jurisdiction under Section 85 is not total and omnipotent and that there may be cases which could still be entertained by Civil Courts. In view of the language employed in Sections 83 and 85, coupled with the reference of Civil Courts in Sections 86, 90 and 93, it appears that the question of bar of jurisdiction of the Civil Court, has given rise to conflicting decisions.



The decision in **Ramesh Gobindram Versus Sugra Humayun Mirza Wakf reported in (2010) 8 SCC 726** attempted to settle the controversy, but has produced conflicting results in the subsequent decisions. In that case suit for eviction of tenants occupying Waqf properties filed before the Waqf Tribunal. The Hon'ble Supreme Court observed that the Waqf Act, 1995 does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of tenant in occupation of waqf property or the rights and obligations of the lessor and lessees of such property and accordingly held that a suit for eviction of tenants from what is admittedly Waqf property could be filed only before the Civil Court and not before the Tribunal. The Hon'ble Supreme Court in judgment in Faseela M. Vs. Munnerul Islam Madrasa Committee (2014) 16 SCC 38 held that the issue relating to eviction of tenant by filing application before the Waqf Tribunal held that the issue relating to eviction of tenant is squarely covered by Ramesh Gobindram Case and Bhanwar Lal Vs. Rajasthan Board (2014) 16 SCC 51 is not consistent with Ramesh Gobindram.

The Hon'ble Supreme Court in the recent judgment in **Rashid Wali Beg Versus Farid Pindari and others reported**



in (2022) 4 Supreme Court Cases 414 discussed all the relevant judgments on this point and elaborately discussing the relevant provisions of Wakf Board Act, 1995, held that the basis of decision in *Ramesh Gobindram* stands removed by amendment Act, 27 of 2013. In paragraph 54 of the Judgment it is summarized that “ in sum and substance, the Act makes a reference to 3 types of remedies, namely, that of a suit, application or appeal before the Tribunal, in respect of the matters (sub paras 54.1 to 54.20) listed therein which includes 54.19. Eviction of a tenant or determination of the rights and obligations of lessor and lessee of Waqf property (Section 83(1) after its amendment under Act 27 of 2013). Paragraph 56 of the Judgment summarized that a combined reading of Sections 68(6), 86, 90 and 93 shows that the bar of jurisdiction under Section 85 does not apply at least to the matters (listed in sub paras 56.1 to 56.4) covered by Section 68(6), 86 and 90 (i.e. to approach Civil Court).

In view of the ratio of Judgment of Hon’ble Supreme Court in Rashid Wali Beg Versus Farid Pindari and Others reported in (2022) 4 Supreme Court Case 414 and Amendment Act, 27 of 2013, it is clear that Bihar Waqf Tribunal, Patna has jurisdiction for passing order for eviction of tenant-Bank.



In the case on hand, the property is admitted to be a wakf property and it is now well settled that the eviction application is maintainable before the Tribunal as discussed above. Accordingly, the contention of the petitioner that the Tribunal has no jurisdiction is liable to be rejected.

Admittedly, the order dated 23.09.2015 in respect of the fixation of the rent at the rate of Rs. 20 per square feet per month has not been challenged in appeal but the same was challenged by filing CWJC No. 18120 of 2015 before this Court which was disposed of as infructuous vide order dated 02.05.2018.

In view of the above discussions, in my view, the Tribunal has acted according to law and there is no illegality in the impugned order. In the result, this Revision has no merit, hence dismissed.

(Sunil Dutta Mishra, J)

saurobhkr/-

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