

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.490 of 2018

=====

Ghyasuddin Son of Md. Abdul Gafaruddin, Resident of Village-P.O. and P.S. E kangarsarai, District-Nalanda.

... .. Petitioner/s

Versus

1. Ramesh Chaudhary, Son of Late Preman Chaudhary Resident of Village-P.O. and P.S. E kangarsarai, District-Nalanda.
2. The State Of Bihar through the Collector, Nalanda at Biharsharif
3. Bihar Sunni Wakf Board through its C.E.O. S.P. Verma Road, Patna-1.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Bhanu Pratap Singh Mr. Amar Nath Singh
For the State	:	Mr. Birendra Prasad Singh, AC to SC 19
For respondent no. 1	:	Mr. Ram Chandra Singh Mr. Lal Bahadur Singh Ms. Dimple Kumari
For respondent no. 3	:	Mr. Md. Helal Ahmad

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

8 06-09-2022 Heard learned Counsel for the parties concerned.

The petitioner is aggrieved by order, dated 24.01.2018, passed, in Title Suit No. 56 of 1997, by learned Sub Judge-I, Hilsa, Nalanda, by which the review petition filed by the petitioner has been rejected.

A suit for declaration of title and recovery of possession was filed by the respondent no. 1-plaintiff, bearing Title Suit No. 14 of 1995/56 of 1997. Admittedly, the suit was filed on 15.05.1995. The petitioner, who is defendant no. 1 in the suit, filed a petition on 30.07.2010 before the learned Court below, contending that after coming into force of the amended



provision of Section 85A in the year 2006, in the Wakf Act, 1995, the suit has to be transferred to the Tribunal, constituted under the Wakf Act, which has been conferred jurisdiction to decide the dispute relating to the Wakf property.

The said contention of the petitioner has been rejected by the learned Court below, vide its order, dated 10.04.2014, and aggrieved by the said order, the petitioner preferred CWJC No. 10834 of 2014, which was dismissed as withdrawn with liberty to the petitioner to file review petition before the learned Court below itself. Pursuant to the aforesaid order, the petitioner filed a petition for review of the order, dated 10.04.2014, which also got dismissed by the learned Court below and the contention of the petitioner has been rejected on the ground that the present suit is not affected by the bar created under Section 85 of the Wakf Act, 1995 inasmuch as the suit was filed before commencement of the Wakf Act, 1995.

Learned Counsel for the petitioner submits that the impugned order is completely erroneous and is not sustainable in law in view of the fact that by amendment, Section 85A has been inserted in the Wakf Act, 1995, which clearly stipulates that all pending proceedings before any Court pertaining to the Wakf Act, 1995 with regard to the disputed property shall be



transferred to the Tribunal for adjudication and in view of the amendment brought in the Wakf Act, 1995, the High Court, in the administrative side, has issued direction to all the District Judges of Bihar to transfer all pending cases for adjudication before the Tribunal. He further submits that, admittedly, the dispute involved in the suit relates to the Wakf property and even if it is denied by the plaintiff. Relying upon the decision of the Supreme Court, in the case of **Rajasthan Wakf Board v. Devki Nandan Pathak and Others**, reported in **2017 (2) PLJR 463 (SC)**, learned Counsel submits that the dispute as to whether a property is wakf property or not can only be decided by the Tribunal.

On the other hand, learned Counsel for the respondent no. 3, Wakf Board, submits that the property involved in the suit is wakf property to the extent of 20 decimals and the Tribunal is the only forum, which can adjudicate the dispute brought by the respondent no. 1-plaintiff.

On the other hand, learned Counsel for the respondent no. 1-plaintiff submits that admittedly the suit has been filed by the plaintiff prior to the commencement of the Wakf Act, 1995, inasmuch as the Wakf Act, 1995, came into force with effect from 01.01.1996 and the suit was filed, prior to the



commencement of the Wakf Act, 1995, on 15.05.1995. He also submits that the properties involved in the suit is a large chunk of property, having bigger area, except 02 decimals of land, which belongs to the Wakf Board. Accordingly, his submission is that the suit filed by the plaintiff, prior to the commencement of the Wakf Act, 1995, shall not be affected by the provision of Section 85A of the Wakf Act, 1995.

In support of his contention, learned Counsel relies upon the decision of this Court, in the case of **Md. Moinuddin v. Md. Mustafa and Others**, reported in **2010 (1) PLJR 126**, in which similar issue was involved as to whether the suit filed prior to the commencement of the Wakf Act, 1995 shall be adjudicated by the Tribunal of the Civil Court.

Paragraphs 18 and 19 of **Md. Moinuddin** (supra) is quoted herein below:-

“18. As a matter of fact this Court has only analyzed the scheme under Sections 7, 85, 85A of the Act and has gone into the scope of the administrative circular dated 24.7.2007 to clarify the position of applicability of Section 7 of the Act in this State. The law otherwise has been already settled by the Apex Court in the case of **Sardar Khan & Ors. vs. Syed Najmul Hasan (Seth) & Ors.**, reported in **AIR 2007 S.C. 1447**, wherein the Apex Court after examining the scheme of the



Act had held that—

"the Tribunal shall not have jurisdiction to determine any matter which is subject matter of any suit or proceeding instituted or commenced in a civil court before commencement of the Act and if any suit has been instituted in any civil court prior to coming into force of the Wakf Act, 1995, then the Tribunal will have no jurisdiction to decide such matter and to continue and conclude as if Act has not come into force."

19. The aforementioned ratio laid down by the Apex Court in the case of **Sardar Khan** (supra) being the law of land could not have been distinguished, as was however sought to be done by Mr. Hoda, learned counsel for the petitioner, on the ground of date of institution of the appeal being 27.6.2000 because in that case also the suit was filed on 19.12.1976 and the judgment was delivered on 23.1.1996 and an appeal was filed on 1.3.1996 and yet the Apex Court having held that the suit was pending since 19.12.1976 i.e. prior to commencement of the Act i.e. 1.1.1996 had held that the Tribunal will have no jurisdiction to decide the suit or appeal arising from that suit. The law, therefore, either with respect to the suit or appeal in respect of the Act stands settled in the judgment of **Sardar Khan** (supra) wherein the pronouncement of law in this respect is as follows:

"On a conjoint reading of sub-



section (5) of Section 7 and Section 85, the result would be that the Act will not be applicable to the pending suits or proceedings or appeals or revisions which have commenced prior to 1.1.1996 i.e. coming into force of the Wakf Act, 1995."

I have heard learned Counsel for the parties concerned.

From perusal of the decision rendered by this Court, in the case of **Md. Moinuddin** (supra), it appears that similar question arose in **Md. Moinuddin** (supra) and this Court, after relying upon the decision of the Supreme Court, in the case of **Sardar Khan** (supra), wherein pronouncement of law in respect of the provision is as follows:

"On a conjoint reading of sub-section (5) of Section 7 and Section 85, the result would be that the Act will not be applicable to the pending suits or proceedings or appeals or revisions which have commenced prior to 1.1.1996 i.e. coming into force of the Wakf Act, 1995."

Accordingly, this Court, in **Md. Moinuddin** (supra), came to the conclusion that if any suit has been instituted in any civil court prior to coming into force of the Wakf Act, 1995, then the Tribunal will have no jurisdiction to decide such matter.



In view of the law laid down by this Court, in the case of **Md. Moinuddin** (supra), I am of the opinion that the view taken by the learned Court below, in the impugned order, does not suffer from any legal infirmity.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-AFR

U	√		
---	---	--	--

