

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No. 34 of 2019

Chotey Narayan Son of Late Satyadeo Narayan Laheri Resident of Sherpur Town, Mauza Hajipur, Makhdumpur, P.O. and P. S. Biharsharif, District-Biharsharif (Nalanda).

... .. Petitioner/s

Versus

The Chief Executive Officer Bihar State Sunni Wakf Board, Haj Bhawan, Harding Road, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Advocate
For the Respondent/s : Mr. Md. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

18 07-08-2023 Heard Mr. Jitendra Kishore Verma, learned counsel for the petitioner and Mr. Md. Helal Ahmad, learned counsel appearing on behalf of the applicant- opposite party.

2. The present Civil Revision application has been filed under Section 83(9) of the Waqf Act, 1995 against *exparte* order dated 11.01.2019, passed by the learned Bihar Waqf Tribunal, Patna in Eviction Application no. 14 of 2017, whereby the learned Tribunal in an *exparte* proceeding held the petitioner to be an encroacher and directed him to vacate the premises mentioned in the Eviction Application within 45 days, failing which penal consequences will follow and further Chief Executive Officer (hereinafter referred as C.E.O.) has been directed to get the order affixed on conspicuous places. If the encroacher did not vacate the premises within the stipulated



period, he shall be liable to pay damages @ Rs. 5000/- per day which will be realized through process of law.

3. The case of the Bihar State Sunni Waqf Board-applicant-opposite party, in short, is that the shop in question belonging to Sogra Waqf Estate is situated at Mohalla Sherpur Bazar, Mauza Hajipur Makhdoompur, Thana No. 114 under Bihar Sharif Nagar Nigam, Ward No. 35, holding No. 232. The said shop in question was let out to Satyadev Narayan of which the rent was paid till July, 2000 @ Rs. 60/- per month. The rent was subsequently revised by the administrator and fixed at Rs. 150/- per month which was accepted by opposite party-petitioner, who was son of said Satyadev Narayan. The opposite party-petitioner also tried to get his name mutated in the Nagar Nigam and subsequently, rent fixation was rejected by C.O. It is also contended that the opposite party-petitioner also raised illegal construction over the Waqf land. It was further said that after the death of Satyadev Narayan, his son Chotey Narayan (Petitioner) occupied the said shop without any agreement from Sogra Waqf Estate. He did not pay rent from August, 2000 uptill now and thus declared him to be encroacher. The proceeding under Section 54 was sought to be initiated. The C.E.O. on receipt of such written complaint, claimed to have issued notice



to the petitioner vide letter no. 2164 dated 19.06.2016 in Form no. 52 under Section 54 of the Waqf Act. It is stated that petitioner did not appear before C.E.O. Thereafter a reminder notice was sent. Acceptance of notice was refused by the petitioner as alleged by the applicant-opposite party. The proceeding was decided *exparte* and the C.E.O. held that opposite party-petitioner is an encroacher within the meaning of Section 3(ee) of the Waqf Act, and accordingly directed to file an application along with documents before the Waqf Tribunal for delivery of possession in terms of Section 54(3) of the Waqf Act. The opposite party filed Eviction Application No. 14 of 2017 along with following documents which are as follows:-

- i. photocopy of the complaint petition dated 25.08.2016
- ii. Photocopy of notice dated 19.09.2016
- iii. Photocopy of reminder notice dated 14.10.2016
- iv. Photocopy of letter No. 996 dated 21.12.2003
- v. Photocopy of record dated 07.12.2013
- vi. Photocopy of rent receipt,
- vii. Photocopy of order dated 20.04.2017 passed by C.E.O.

4. After service of notice, nobody appeared on behalf of the opposite party. The case was posted for *exparte* hearing vide order dated 11.02.2018 and vide order dated 11.01.2019, the learned Tribunal held the petitioner to be an encroacher and



against the said order, this Civil Revision application has been filed.

5. Learned counsel for the petitioner submits that no notice was served on the petitioner and the learned Tribunal passed *exparte* order against the petitioner. It is contended that petitioner cannot be evicted through the summary proceedings for removal of encroachment under Section 54 of the Waqf Act when according to the Waqf Board itself the petitioner's father was a tenant and rent was paid till July, 2000 at Rs. 60/- per month which was revised to Rs. 150/- per month and same was accepted by the petitioner and as such, on this pleadings, petitioner being the son of original tenant cannot *ipso facto* be called an encroacher just because of the death of his father within the meaning of Section 3(ee) of the Waqf Act, 1995 when there is no case that tenancy was for a fixed term tenancy rather it is the positive case of the Waqf Board that tenancy was a month to month tenancy. Further, it has never been a case nor pleaded anywhere that the tenancy of the father of the petitioner was ever terminated by following the provision of Transfer of Property Act or for the matter any law applicable. It is submitted that a tenancy on the death of the lessee/tenant, being a property is inherited by the heirs of original tenant/ lessee and he steps



into the shoes of the original lessee and therefore by no stretch of imagination his possession can be called a possession of encroacher or without the authority of law under Section 3(ee) of the Waqf Act unless and until any special law provides to the contrary which is not the case pleaded or relied upon either in the order of C.E.O. or the learned Waqf Tribunal as the very foundation of jurisdictional fact to initiate a proceeding under Section 54 of the Waqf Act and pass an order thereunder is that the opposite party-petitioner is an encroacher.

6. Learned counsel for the petitioner further submits that the case of the Waqf Board is that the revision of rent has been accepted by the petitioner thereby they acknowledged the petitioner to be a tenant and in the same breadth contended that the petitioner is an encroacher on account of death of his father, who was the original tenant. It is vehemently submitted that the order of C.E.O. as well as learned Waqf Tribunal are in the teeth of general law of the land as also in the teeth of law laid down by the Hon'ble Apex Court which clearly holds that on the death of original tenant, the tenancy rights devolves on the heirs with full incidence of tenancy as were enjoyed by the original tenant unless there is contrary provision in law limiting the right of succession.



7. Learned counsel for the petitioner placed reliance on decision of Hon'ble Apex Court in the case of ***H.C Pandey Vs. G.C. Paul*** reported in ***AIR 1989 SC 1470*** and in the case of ***Parvinder Singh Vs. Renu Gautam and others*** reported in ***AIR 2004 SC 2299***, which holds that normally tenancy rights is heritable unless there is legal bar operating against heritability is shown to exist. The heirs who inherit tenancy inherit both rights and obligation.

8. Learned counsel for the petitioner further submits that the Waqf Board having not pleaded a case of fixed term tenancy nor a case that the Board has already terminated the tenancy of his father before his death cannot be permitted to raise this plea in absence of any pleading in this regard and any evidence or finding cannot be looked into and has to be ignored. Learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Apex Court in the case of ***Union of India Vs. Ibrahim Uddin & Anr.*** reported in ***2013 (1) PLJR 48 SC*** at paragraph 69(VII) which reads as follows:-

“The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has



been adduced or a finding of fact has been recorded by the Court, it is just to be ignored. Though it may be a different case where in spite of specific pleadings, a particular issue is not framed and parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it.”

9. It is submitted that the petitioner having inherited tenancy rights himself became tenant by the operation of general law as also in view of admission of Waqf Board that petitioner had accepted the revised rent and cannot by any stretch of imagination be termed as without the authority of law so as to attract the Section 3(ee) and the order passed by the C.E.O. holding the petitioner to be an encroacher under Section 3(ee) are wholly perverse and the entire proceeding is liable to be set aside.

10. So far as the Waqf Property Lease Rule 2014 read with Section 56 of the Act is concerned, the property has not been made inapplicable rather the reading of these provisions make them supplemental to the main provisions of the Transfer of Property Act. In fact, Section 2(h) assigns same meaning to



lease, lessor and lessee as have been given under T. P. Act. Rule 26 of Waqf Properties Lease Rules, 2014 provides that the lease shall be for the benefit and be binding upon the heirs of the lessee and thus, the whole argument that lease hold right is not heritable is contrary to the provisions of Rule 26 of the Waqf Properties Lease Rules, 2014. Learned counsel for the petitioner further submits that so far as provisions of natural justice is concerned, the proceeding before C.E.O. and learned Waqf Tribunal were undisputedly *exparte* and in the interest of justice, both the orders are fit to be set aside on the ground of being *exparte* without due service of notice on the petitioner and being violation of provisions of natural justice and interest of justice requires that the petitioner should be given opportunity to defend the case and prove his own case inasmuch as regarding the service of notices aspect, there are contradictory finding in both the orders. At one place in the 5th paragraph of annexure 2, it is claimed that notice was served and then a reminder notice was given which is contradictory in itself as once notice was served, there was no need to issue reminder notice. In the 7th paragraph of annexure 2 at running page 18, it is claimed that notices issued were refused by the opposite party and as such, the service of notice was presumed to be valid service of notice.



The learned Tribunal has recorded the finding that notice issued to the opposite party did not return to the Board and as such, it was presumed to be served. Therefore, there is no prove of either refusal to receive the notice/service of notice in terms of Order 5 of the Code of Civil Procedure by following the procedure therein regarding pasting of notice at conspicuous place. Lastly, learned counsel for the petitioner submits that application was not maintainable for want of impleadment of necessary party. As per the Waqf Board case, the original tenant having died and as a matter of fact, the original tenant had two sons and their families. The initiation of the present proceeding is inherently bad and not maintainable for want of impleadment of necessary party.

11. On the other hand, learned counsel for the Waqf Board submitted that petitioner was given various opportunities to appear and defend their cases through effective service of notices and even then petitioner has not participated in proceeding either before the C.E.O. or before the learned Waqf Tribunal. The petitioner ought to have moved before the Tribunal itself for setting aside exparte order or judgment or decree under Order 9 Rule 13 of the Code of Civil Procedure. It is alleged that petitioner has tried to get his name mutated in the



Nagar Nigam which was rejected and further letter no. 996 dated 15.12.2003 issued by the C.E.O. Nagar Parishad Bihar Sharif clearly indicates that rent fixation of the holding of the Bibi Sogra Waqf Estate was done during 1994-95 under Ward No. 13 holding No. 232 which stands in the name of Bibi Sogra Waqf Estate. It is submitted that the Circle Officer, Bihar Sharif has informed the Sub Divisional Magistrate, Bihar Sharif that a case for rent fixation bearing Rent Fixation Case No. 1 of 2003-04 has already been rejected and on spot inquiry, it has been found that Chotey Narayan Laheri is living in a small house since last several years. On the basis of complaint dated 25.08.2016 filed by Mutawalli of Sogra Waqf Estate, the Waqf Board had initiated encroachment proceeding under Section 54 of the Waqf Act, 1995 (Amendment Act, 2013) against the petitioner with regard to shop in question, which was let out to Satyadev Narayan to which rent was paid till July, 2000 which is illegally occupied by the son of Satyadev Narayan and the petitioner is an encroacher of the above waqf property under Section 3(ee) of the Waqf Act 1995 (Amendment Act, 2013). The Eviction Application No. 14 of 2017 was filed before the Waqf Tribunal and notice was issued to the petitioner and after valid service of notice, matter proceeded *exparte* against the



petitioner and learned Waqf Tribunal has passed order dated 11.01.2019 in accordance with law having no legal infirmity.

12. In view of specific assertion made by the revisionist that no notice whatsoever was ever served upon revisionist as well as perusal of impugned order makes it evident that although it has been indicated that notice was issued upon the opposite party (petitioner), the opposite party did not appear and so the case was posted for *exparte* hearing vide order dated 11.02.2018. The order does not indicate anywhere as to whether and by which mode the notice was issued to revisionist petitioner. The only fact indicated in the order is that notice was issued upon the petitioner.

13. In the considered opinion of this Court, the learned Tribunal has clearly erred in not recording a finding as to when and by which mode notices were issued to the revisionist-petitioner and how services can be said to have been effected upon the said person. The learned Tribunal was clearly unjustified in deciding the eviction application without hearing the petitioner and as such the order impugned is clearly vitiated due to violation of principles of natural justice.

14. Considering the facts and circumstances of the case, the revision application is allowed and the impugned order



dated 11.01.2019 passed by the learned Waqf Tribunal, Patna in Eviction Application No. 14 of 2017 is hereby set aside.

15. The aforesaid eviction application is remanded to the learned Waqf Tribunal for reconsideration afresh on merit.

16. Since the revisionist-petitioner has already appeared/represented before this Court, the notice upon the revisionist-petitioner is deemed as sufficient.

17. The parties shall appear before the Waqf Tribunal on 04.09.2023. The Waqf Tribunal is directed to decide the Eviction Application No. 14 of 2017 afresh expeditiously and, preferably, within a period of six months from the date of receipt/production of a copy of this order provided there is no other legal impediment.

(Khatim Reza, J)

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