

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.62 of 2019

Md. Masre Alam Khan Son of Late Ataul Rahman R/o Mohalla-Ramna Road,
P.O.-Bankipur, P.S.-Pirbahore, District-Patna

... .. Petitioner

Versus

1. The Chairman Bihar State Sunni Wakf Board Haz Bhawan, 34 Ali Imam Path, Harding Road, Patna
2. The Chief Executive Officer Bihar State Waqf Tribunal, Patna, Haz Bhawan, 34 Ali Imam Path, Harding Road, Patna
3. The Presiding Officer Bihar State Waqf Tribunal Patna, Haz Bhawan, 34 Ali Imam Path, Harding Road, Patna
4. Md. Anwarul Haque S/o Late Ehteshamul Haque R/o Mohalla-Ramna Road, P.O. Bankipur, P.S.-Pirbahore, District-Patna

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Dharendra Singh, Advocate
For the Opposite Party Nos. 1 & 2	:	Mr. Md. Helal Ahmad, Advocate
For the Opposite Party No. 4	:	Mr. Rupesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

9 23-03-2023 Heard learned counsel for the petitioner, learned counsel for the opposite party Nos. 1 and 2 as well as learned counsel for the opposite party No. 4.

2. This Civil Revision application has been filed against the judgment and order dated 15.01.2019 passed by the learned Waqf Tribunal, Bihar, Patna in Title Eviction Suit No. 25 of 2009 by the defendant-petitioner.

3. Originally Title Eviction Suit No. 06 of 2005, filed by Md. Anwarul Haque against Mashre Alam Khan @ Mashre Alam before the learned Munsif, 1st, Patna for eviction of the



defendant from the suit premises which is Waqf property mentioned in Schedule I of the plaint on the ground of default and arrears of rent and also cost of the suit on 20.07.2005. An application under Section 85 of Waqf Act, 1995 was filed on 05.11.2007 by the plaintiff for transferring the suit, bearing Title Eviction Suit No. 06 of 2005 to the Waqf Tribunal. The learned Munsif transferred the aforesaid suit to the Waqf Tribunal in view of Section 85-A of the Waqf Act, 1995 (Bihar Amendment Act, 2006) *vide* order dated 07.03.2008. Against the aforesaid order, petitioner filed an application bearing Civil Miscellaneous (Transfer) Case No. 113 of 2015 before the District Judge, Patna, which was dismissed on 07.07.2015, with an observation that the Waqf Tribunal, Patna is not sub-ordinate of the District Judge, Patna. If the petitioner has any grievance against the order of learned Munsif, 1st, Patna, then the petitioner may move before appropriate forum.

4. It is pertinent to mention that earlier a C.W.J.C. No. 3445 of 2010 was filed by the petitioner against the order dated 07.10.2009, passed by the learned Waqf Tribunal, Patna, the said writ application was disposed on 20.05.2011 with an observation that the order dated 07.10.2009 of the Bihar Waqf Tribunal in Title Eviction Suit No. 25 of 2009 (Title Eviction



Suit 06 of 2008) was modified to the extent that whether the Waqf in question was a registered Waqf or not amenable to the jurisdiction of the tribunal remains open for adjudication by a reasoned and discussed in order at the time of final disposal.

5. The case of the plaintiff in short is that the suit house is a Waqf property standing over Municipal Survey Plot No. 33, containing three shops facing towards *Ramna* road, bearing Holding No. 27/20, Ward No. 12/30, Mohalla *Ramna* Road, District Patna, belonged to great grandmother namely Bibi Rahiman of the plaintiff, who gifted 5 *anna* 4 pies share in the said holding to her daughter-in-law (Ummul Fatma), under a registered deed of gift dated 11.04.1928. Both Bibi Rahiman and Ummul Fatma jointly dedicated the said property to Waqf on 09.04.1932 for maintenance of *Ramna* road *Masjid* and expenses for the holy month of “*RAMZAN*”. It is further case of the plaintiff that they appointed Ehteshamul Haque, grandson of Bibi Rahiman and son of Ummul Fatma as *Mutawalli* for managing the Waqf property and his name was mutated in the Municipal plot survey of 1932/33. He managed the property and maintained the *Ramana* road *Masjid* from the income of the said holding. When Ehteshamul Haque got advance in age then he appointed opposite party No. 4 as *Mutawalli*. The plaintiff is the



sixth son of Late Ehteshamul Haque. The plaintiff was found to be most competent person to manage the said Waqf property. The plaintiff's name was muted in Patna Municipal Corporation and he is paying municipal taxes of aforesaid holding. It is contended that the defendant's father namely Ataul Rahman Khan was one of the tenants in occupation of two *khapraposh* hall and open space with a small *pakka* room on ground floor of the premises and a stair and one *kachha khapraposh* hall over two *pucca* shops. After the death of Ataul Rahman Khan (father of the defendant) the defendant continued as a tenant in the suit premises on a monthly rental of Rs. 1,000/- (One thousand) per month. The tenancy of the defendant is according to English calendar, starting from 1st day of the month and ending on the last day of the each English calendar month. The defendant had to make payment positively by the 15th day of the following months. It is also contented that the defendant paid rent up to March 2005, for which printed receipts were issued to the defendant and the defendant counter-signed on the counter-foil receipts maintained by the plaintiff in ordinary course of business. The defendant is carrying on Bakery business on the ground floor of the tenanted premises and the first floor is used for residence of the defendant. The defendant has defaulted in



payment of rent since April 2005, which is more than two months and has made himself liable to be evicted. A sum of Rs. 3,000/- (Three Thousand) is due towards the rent from the defendant. Plaintiff made several demands from the defendant for vacating the suit premises but the defendant has evaded and has refused to vacate the same.

6. On the other hand, the claim of the defendant in short is that he denied the claim of the plaintiff and asserted that the said property did not belong to Bibi Rahiman. It is also contended that Bibi Rahiman had not gifted 5 *annas* 4 pies share in the said holding to Ummul Fatma by registered deed of gift dated 11.04.1928. It is submitted that Bibi Rahiman had no right, title and interest in the said holding so she had no legal right to make a gift of the said holding. It is also contended that Bibi Rahiman and Ummul Fatma had no right, title and interest in the said property and as such they had no right to create a Waqf of the suit property. It is contended that defendant was not a tenant of the plaintiff. It is further claimed that defendant is in occupation of the suit premises as absolute owner. It is further contended that he has never paid rent to the plaintiff. He was never given any receipt by the plaintiff nor he has signed any counter-foil on any receipts and hence there is no relationship of landlord and



tenant. Further case of the defendant is that one Syed Zainul Abdin Khan of Bhikna Pahari, was the landlord, who had settled the said land to the grandfather of defendant-petitioner, who took the settlement in the name of minor son Rahman Khan, the father of this defendant-petitioner and the ex-landlord granted a *Hukumnama* in the name of father of this defendant on 06.07.1855. Thereafter the grandfather had constructed house over the said land. After the death of his father, namely Ataul Rahman, became the owner of the said land and house. It is also the case of the defendant that the defendant was granted rent receipt by the ex-landlord for the suit land. The electric meter was installed in the name of his father and his name was also recorded in revenue and Municipal records. The petitioner further contended that there is no relationship of landlord and tenant between the plaintiff and the defendant nor the plaintiff has any right title and interest in the suit property, hence this suit for eviction is not maintainable.

7. The learned Waqf Tribunal after considering the evidence oral as well as documentary, has held that the Waqf was created on 09.04.1932 by register deed of Waqf and original owners of the suit land were Bibi Rahiman and Bibi Ummul Fatima. It is also held that the other documents i.e. Exhibit 2



series shows that the father of the defendant-petitioner was originally inducted as tenant in the suit premises and after demise of Ataul Rahman, the father of defendant-petitioner, the defendant Mashre Alam Khan continued as tenant of the suit premises and has defaulted the payment of rent from April to June, 2005 till today.

8. The learned counsel for the petitioner submits that the learned Waqf Tribunal failed to consider that municipal survey *khatiyani* filed by the plaintiff relates to holding no. 19 and it does not relate to holding no. 27/20. It is further stated that the assessment in terms of the Municipal Corporation was that the name of present plaintiff was mutated on holding no. 27/20 *vide* order dated 21.01.2000. The learned counsel for the defendant further submitted that the total area of plot no. 33 is $\frac{1}{2}$ *Katha*. The defendant has filed *Hukumnama* and rent receipt in support of his claim. The petitioner stated that the Waqf Tribunal has failed to appreciate that the suit property is the *Raiyati* land of the petitioner which was never being registered as Waqf in the Board. The learned counsel for the petitioner further submits that the Waqf Tribunal has failed to appreciate the relevant documents which were produced before the court of Munsif 1st, Patna in Title Eviction Suit No. 06 of 2005. The same document



was found forged by the learned Munsif 1st, Patna, which has been completely ignored by the Waqf Tribunal. It is also submitted that the plaintiff-opposite party no. 4 has failed to establish the relationship of landlord and tenant. It is further submitted that learned Tribunal has also failed to appreciate that petitioner has possessed ownership as *Raiyat* and his name is also entered into Register-II, *Khatiyar* and rent receipt in the name of petitioner. Learned counsel for the petitioner further submits that the plaintiff has not stated as to since when the defendant is tenant in the said premises and what was initial rent and in what manner the rent was received. The plaintiff has filed some counter foil of payment of house rent and these rent receipts relates to holding no. 28 and not to holding no. 27/20.

9. From perusal of the judgment/order of the learned Waqf Tribunal, on analysis the same and perusal of material it transpired that on record the property in question is a Waqf property, dedicated on 09.04.1932.

10. The claim of the petitioner is that he has the title of the property on the basis of "*Hukumnama*" dated 06.07.1855 and also has an electric connection in the name of his father. There is no proof of such "*Hukumnama*" and the "*Zamindari Return*" has not been brought on record to substantiate his claim



on the basis of “*Hukumnama*” and, therefore, the claim of title by the defendant stands vitiated.

11. The claim of the plaintiff-opposite party is that it is registered Waqf as established by a registered deed of Waqf dated 09.04.1932, Municipal Survey *Khatiyan*, Taxation Assessment Register, Counter-foil of rent receipts of the petitioner. It is important to mention that the property in question was dedicated as Waqf by the landowners, namely, Bibi Rahiman and Ummul Fatima for the benefit of Mosque, situated at Ramna Road and the expenses for the month of “*RAMZAN*” were made out of the income of the Waqf property, beside other works were also done by the income of the said property. Both the *Waqifa* appointed Md. Ehteshamul Haque (great grandson of Bibi Rahiman and son of Ummul Fatma) as *Mutawalli* for the management of the Waqf property. The name of said Md. Ehteshamul Haque was mutated in the Municipal Survey *Khatiyan* in the year 1932 as *Mutawalli* and the land was mentioned as property of *Masjid*, which was also registered in the office of Bihar State Suni Waqf Board bearing Waqf Estate No. 2460 (Patna).

12. The case of the plaintiff-opposite party No. 4 is that when Ehteshamul Haque became of advance age and incapable



to look after the Waqf property, he nominated opposite party No. 4, Md. Anwarul Haque as *Mutawalli*. Accordingly, in the year 1985 opposite party No. 4 was appointed as *Mutawalli*. It is further pleaded that the defendant-petitioner has paid him rent till March 2005 @ Rs. 1000/- (One Thousand) per month and has given the rent receipts on which the defendant-petitioner has counter-signed. The defendant-petitioner stopped the payment of rent from April 2005 to June 2005. At the time of filing of the present suit the rent was due from April to June 2005 @ 1,000/- (One Thousand) per month. The defendant further failed to pay rent for the month of July 2005 to November 2010, which was due amounting to Rs. 65,000/- (Sixty Five Thousand).

13. From perusal of the records it appears that the defendant was inducted as tenant @ Rs. 1,000/- (One Thousand) Per Month. The witnesses have proved the factum of tenancy of Md. Mashre Alam Khan and payment of rent by the father of Md. Mashre Alam Khan, namely, Ataul Rehman Khan to the *Mutawalli* and by Md. Mashre Alam Khan (Petitioner) the defendant himself to the plaintiff *Mutawalli*, namely, Md. Anwarul Haque and in support of tenancy the rent receipts have also been filed.

14. It is manifest from a plain reading of the impugned



order and material on record that the basis of claim of the petitioner is “*Hukumnama*” in the name of ancestor of the petitioner executed on 06.07.1855, by the ex-landlord and the electric meter was installed in the name of his father and entry in revenue and municipal records. The petitioner though raised his claim on the aforesaid documents and denied the relationship of landlord and tenant but has miserably failed in proving the “*Hukumnama*” which could not be substantiated by supporting the same on the basis of *Zamindari* Return and revenue and municipal records could not create any title in presence of registered Waqf deed dated 09.04.1932, whereas the claim of the plaintiff-opposite party No. 4 is based on registered Waqf deed, wherein the properties is dedicated by Bibi Rahiman and Ummul Fatma on 09.04.1932, for upkeep of Mosque situated at Ramna Road, Patna and also for the expenses for the month of “*RAMZAN*”. It is relevant to mention in the case of ***Chhedi Lal Misra (dead) through LRS Vs. Civil Judge Lucknow and others*** reported in (2007) 4 ***Supreme Court Cases*** 632, wherein his lordships has held that once a Waqf is created it continues to retain such character. It is further established by the counter-foil of rent receipts that petitioner and his father has been paying month



to month rent, which subsequently stopped from April 2005. This establishes tenant-landlord relationship and as case of default. Further, the documents such as Exhibit-1 is original registered sale deed executed by Mostt. Shibni Pasi daughter of Kewal Pasi wife of Chunni Pasi (who purchased the said land from Syed Molvi Wali Azam through registered sale deed dated 30.12.1880) in favour of Bibi Rahiman dated 20.12.1893, Ext. 1/B is the registered Waqf deed dated 09.04.1932, Ext. 1/C original gift deed executed by Bibi Rahiman in favour of her daughter-in-law Ummul Fatma dated 11.04.1928, Ext. 2 the revenue receipt in favour of Bibi Rahiman dated 27.06.1908, revenue receipt in favour of Bibi Rahiman dated 27.12.1927, tax receipt in favour of Ehteshamul Haque (*Mutawalli*) dated 20.06.1964 issued by Patna Municipality of the Waqf property bearing Holding No. 2, tax receipts dated 30.06.1965, 30.12.1976 (Ext-2 to 2/D), counter-foils of rent receipts dated 07.05.1990, 16.03.1990 and 09.11.1993 in the name of Aatur Rehman (father of the petitioner), rent receipt in favour of Mashre Alam Khan dated 15.07.1998, 15.08.1998, 15.09.1998 and 18.10.1998(Ext-3 to 3/J), Ext. 7 is the certified copy of Minicipal *Khesra* 1932-33 of Plot No. 33 on which Waqf house is situated, Ext.9 is the Certified copy of assessment of



Holding No. 27/20 and other documents which remained unassailed by the petitioner, which establishes the case of the plaintiff-opposite party No. 4.

15. In any view of the matter, I do not find any illegality or gross jurisdictional error in the impugned order for interference by this Court.

16. This Civil Revision is accordingly dismissed.

(Khatim Reza, J)

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