

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1806 of 2017**

1. Maste Alam
2. Fazale Alam
3. Zahir Alam
4. Tahir Alam
5. Iltaf Alam

All are sons of late Islam Asari

All are residents of Village - Kashi Tengrahi, P.S. - Mohammadpur, District - Gopalganj.

... .. Petitioner/s

Versus

1. Anawarullas and Anuwrol Haque
2. Abdullah
Both sons of Gafur Sah Tengrahi through Bihar State Sunni Wakf Board,
Patna R/o Village P.O. - Kashi Tengrahi, P.S. - Mohammadpur, District -
Gopalganj.
3. Bihar Sunni Waqf Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dhananjay Kumar Tiwary, Advocate
For the Respondent no. 1	:	Mr. Khurshid Alam, Advocate
For the Respondent no. 3	:	Mr. Md. Helal Ahmad, Advocate
		Mr. Md. Ejaz Akhtar, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 11-07-2023

Heard learned counsel for the parties

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 18.08.2017 passed by learned District Judge, Gopalganj in Misc. Case No. 144 of 2017 arising out of Title Suit No. 115 of 2001 by which the suit has been transferred to Bihar Wakf Tribunal, Patna.

3. The brief facts of this case are that father of



petitioners filed the Title Suit No.115 of 2001 seeking declaration that compromise dated 20.11.1998 entered into between the parties under Section 145 of Cr.P.C pending before the Court of Sub- Divisional Magistrate, Gopalganj is a forged and fabricated document and the same is not binding upon the plaintiffs. The trial of the suit proceeded. The objection petition dated 06.08.2016 has been filed before the trial Court for transfer of the suit in question to the Wakf Tribunal on the ground that property in question is Wakf property on which the learned trial Court ordered for adding State of Bihar through Sunni Wakf Board as party defendant No. 3 and fixed the date for argument on the said petition. Respondents before the final order on petition dated 06.08.2016 filed Misc. Case No. 144 of 17 before the learned District Judge, Gopalganj on 02.06.2017 praying for transfer of the suit to the Wakf Tribunal and vide the impugned order learned District Judge, Gopalganj ordered for transfer the instant suit to the learned Tribunal, Patna vide the impugned order dated 18.08.2017.

4. Learned counsel for the petitioners has submitted that the learned Court below passed the impugned order without considering that suit filed by the petitioners is not for adjudication regarding declaration of title of any property, rather



it has been filed only for the purposes of declaration of compromise alleged to have been entered into between the plaintiff and defendant is a forged and fabricated document and the same is not binding upon the plaintiffs/petitioners. Further, he has submitted that the learned Court below failed to appreciate that examination of validity of document is within exclusive jurisdiction of the civil Court which cannot be delegated to any other Tribunal. The Wakf Board was not a party in the said compromise and therefore the issue raised in the suit cannot be adjudicated by Wakf Tribunal. Further, learned counsel for the petitioners submits that, the petitioners have not been heard and the District Judge has got no jurisdiction to transfer the suit under Section 24 of CPC from civil Court to Wakf Tribunal.

5. On the other hand, learned counsel for the respondents submits that the disputed land belongs to Masjid (Mosque) which is Wakf No-1188 which has been illegally encroached by the petitioners. Father of the petitioners had filed a suit bearing title Suit No-115 of 2001 which was going on. Since the dispute was with regard to Wakf property and Section 83 of the Wakf Act empowers the Tribunal to adjudicate the same and Section 85 bars the civil Court jurisdiction in this



regard, accordingly a petition was filed by respondent No.1 being Mutawali of Masjid Kashi Tengrahi through Bihar State Sunni Wakf Board, Patna before District Judge, Gopalgang in which the petitioner did not appear despite information.

6. Learned counsel for the respondents further submits that the learned Registrar General of this Court has issued direction vide memo no. 10175/ Apptt. dated 24.07.2007 to all the subordinate Court of Bihar to transfer the case related to Wakf property to Wakf Tribunal, Patna. In the present case, the suit property was donated to Wakf Board in 1937 through Wakfnama. Since the suit property is Wakf property and under Wakf Act, 1995, the Wakf Tribunal constituted under the Act has exclusive jurisdiction with respect to any dispute with regard to Wakf property, and accordingly, the learned District Judge vide order dated 18.08.2017 transferred the Title Suit No. 115 of 2001 from Munsif Court, Gopalganj to Wakf Tribunal and there is no error committed by District Judge, Gopalganj in transferring the suit to Wakf Tribunal.

7. The Hon'ble Supreme Court in **Rajasthan Wakf Board vs. Devki Nandan Pathak** reported in **AIR 2017 SC 2155** observed that whether the suit land is a Wakf property or not can be decided only by the Tribunal and not by the civil



Court as has been decided by the Apex Court consistently in **Ramesh Govindram vs Sugra Hamayun Mirza Waqf (2010) 8 SCC 726 (AIR 2010 SC 2897)** and **Bhanwar Lal and Anr. Vs Rajasthan Board of Muslim Wakf and Ors. (2014) 16 SCC 51 (AIR 2014 SC 758)**. It has further been noted in para 24 that “Section 83 of the Act empowers the Tribunal to determine any dispute, question or other matter relating to a Wakf or Wakf property under this Act. Section 85 of the Act which deals with the bar of jurisdiction of civil Court provides that no suit or other legal proceedings shall lie in any civil Court in respect of any dispute, question or other matter related to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by the Tribunal.

8. Heard the learned counsel for the parties and considered the material on record. The learned District Judge, Patna transferred the suit to Bihar Wakf Tribunal, Patna vide the impugned order which is a reasoned order considering the submission on behalf of the parties and relevant provisions of Wakf Act and the decision of the Hon’ble Apex Court. It appears that compromise has been challenged but due to rival contention the issue also arises in the suit whether suit property is a Wakf property or not. As stated above, when the law is well



settled that the question whether the suit property is Wakf property or not requires to be adjudicated by the Wakf Tribunal and there is bar of jurisdiction of civil Court to decide such question, then the transfer of suit from civil Court to Tribunal for proper adjudication cannot be treated as illegal on the ground of scope of Section 24 of CPC particularly when the District Judge has duty bound to do so in view of the aforesaid direction of the Registrar General of this Court and statutory provision under the Wakf Act, 1995. This Court is not inclined to interfere in the impugned order under its supervisory jurisdiction under Article 227 of the Constitution of India.

9. This Civil Miscellaneous Application is, accordingly, dismissed.

10. The stay granted by this Court vide order dated 26.02.2018 stands vacated.

11. The Bihar Wakf Tribunal, Patna shall decide the suit expeditiously on its own merit, in accordance with law.

(Sunil Dutta Mishra, J)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	01.05.2023
Uploading Date	11.07.2023
Transmission Date	

