

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.181 of 2018

1. Arun Kumar, Son of Sita Ram Sharma, Resident of Village-Kamta, P.S. Hilsa, District-Nalanda.
2. Basudeo Mahto Son of Late Munshi Mahto Resident of Village-Muradpur, P.S. Laheri, District-Nalanda.
3. Sanjay Singh Son of Ram Lakhan Singh Resident of Village-Totra, P.S. Sarmera, District-Nalanda.
4. Ajay Kumar Son of Raj Nandan Sharam Resident of Mohalla-Murarpur, P.S. Laksi, District-Nalanda.
5. Tara Devi Wife of Late Munna Singh Resident of Village-Kasuruddin Gani, P.S. Labari, District-Nalanda.
6. Sunil Kumar Son of Kameshwar Prasad Resident of Village-Murarpur, Madarsa Gali, P.S. Laheri, District-Nalanda.
7. Sobha Devi Wife of Dinesh Sao, Resident of Village-Tarora, P.S. Fatuha (at Present Daniyama) District-Patna, at Present Mohalla-Murarpur, P.S. Laheri, Post-Biharsharif, District-Nalanda.
8. Janki Sharma Son of Aklu Sharma Resident of Mohalla-Murarpur, P.S. Laheri, Post-Biharsharif, District-Nalanda.
9. Raja Ram Prasad @ Raja Ram Sah, Son of Gobind Saw, Resident of Mohalla-Bharawpar, P.S. Laheri, Post-Biharsharif, District-Nalanda.

... .. Petitioners

Versus

1. Bihar State Sunni Wakf Board Through Its Chief Executive Officer, Haj Bhawan, Harding Road, Patna.
2. Moutawalli Soghra Wakf Estate-2, Biharsharif, Mohalla and P.S. Laheri, Town-Biharsharif, District-Nalanda.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Sanjeeb Kumar Sanju, Advocate
For Opposite Party No. 2	:	Mr. Rashid Izhar, Advocate
For Bihar State Sunni Waqf Board:	:	Mr. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

12 21-08-2023 Heard Mr. Sanjeeb Kumar Sanju, learned counsel for

the petitioners, Mr. Rashid Izhar, learned counsel for the O.P.

No. 2 and Mr. Helal Ahmad, learned counsel for the Bihar State



Sunni Waqf Board.

2. This Civil Revision Application has been filed under Section 83(9) of the Waqf Act, 1995 for setting aside the *ex parte* order dated 26.09.2017 passed by the Chairman, Bihar Waqf Tribunal, Patna whereby Eviction Application No. 04 of 2017 filed by the Bihar State Sunni Waqf Board has been allowed and the order passed by the Chief Executive Officer, Bihar State Sunni Waqf Board dated 02.09.2016 has been affirmed and further declared that the present petitioners are encroachers and directed the petitioners to vacate the encroached properties of Sogra Waqf Estate appertaining to Thana No. 123, Khata No. 176, Plot No. 222, Area 3.06 acres situated at Mauza Kona Sarai, P.S.-Biharsharif, Distt.-Nalanda within 45 days.

3. Learned counsel for the petitioners submits that the petitioners did not receive the notice either of the Chief Executive Officer, Bihar State Sunni Waqf Board or learned Waqf Tribunal in Eviction Application No. 04 of 2017. Consequently, the petitioners could not get opportunity much less reasonable opportunity to appear and place their case and file the relevant documents which were very much relevant for proper adjudication of the dispute.



4. The case of the petitioners is based on settlement of the land made by the *Mutawalli* Sogra Waqf Estate on 25.03.1947 to one Bibi Saeedan, who continued in the possession of the land on settlement and was paying rent to ex-landlord, who granted rent receipts. At the time of vesting of Zamindari, the settlee, namely, Saeedan was found in cultivating possession of the land and, accordingly, the name of Bibi Saeedan was recorded in Register-II and her name was entered into the records of Right. Further case of the petitioners is that after the death of said Bibi Saeedan, her only legal heirs Bibi Hamidan came into the exclusive possession of the land and continued paying rent to the State of Bihar and her name was mutated in the revenue records of the Block Office. It is further contended that the Circle Officer, Biharsarif in collusion with *Mutawalli* of Sogra Wakf Estate has prepared a report regarding encroachment over land, in question, on the basis of measurement of the land made in absence of the petitioners without any notice and ignoring the revenue records i.e. Register-II and the rent receipts issued by the State of Bihar to the petitioners. It is further submitted that due to mistake occurring in the fixation of rent, only 74 decimals was mentioned in the Laggit in place of 1 acres 74 decimals for



which Mostt. Saeedan filed Miscellaneous Case No. 49 of 1977-78 for correction of the said mistake before the Circle Officer, Biharsarif. In the said case, notice was issued to *Mutawalli* Sogra Waqf Estate and after hearing the parties and considering the relevant documents such as *Hukumnama* and rent receipts issued by the Waqf Estate as well as the State Government authorities and finding the possession of Bibi Hamidan over the land and, accordingly, the said mistake was corrected in the Register-II *vide* order dated 30.06.1979. Thereafter, Bibi Hamidan continued in paying rent to the State of Bihar. It is further submitted that petitioners purchased the said land from Bibi Hamidan and after purchase, they have constructed their respective houses and put boundary wall thereon and are residing therein with their family members. It is further contended that the Biharsarif Municipality has created holding number of the houses of the petitioners, who are paying holding tax to the Biharsharif Municipality.

5. It is vehemently submitted by the counsel for the petitioner that vendor of the petitioners, namely, Bibi Hamidan had filed Title Suit No. 87 of 2016 on 05.05.2016 before the learned court of Sub Judge-I, Biharsharif for declaration of title and for removing some construction being made by the



Mutawalli of Sogra Waqf Estate and for issuance of permanent injunction against the Sogra Waqf Estate and also for direction to remove the boundary wall constructed by the Sogra Waqf Estate, which is still pending. Learned counsel for the petitioners also mentioned that Title Suit No. 43 of 1985 was filed by Madarsa Aziziya being maintained by Sogra Waqf Estate for declaration of title over a portion of land of plot no. 222, khata no. 176 against the purchasers as defendant. The said Title Suit was dismissed by judgment and decree dated 31.01.2018 by the learned Munsiff, Nalanda at Biharsharif.

6. On the other hand, learned counsel for the Bihar Estate Sunni Waqf Board and *Mutawalli* have filed counter affidavits denying the claim of the petitioner.

7. Learned counsel for the Waqf Board has submitted that petitioners were given various opportunities to appear and defend their cases. Despite the effective service of notices the petitioners have not participated in the proceedings either before the Chief Executive Officer or before learned Waqf Tribunal, Patna. It is also contended that petitioners ought to have moved before the Tribunal itself for setting aside *ex parte* judgment and decree as per provision enumerated in Order IX Rule 13 of the Civil Procedure Code. Learned counsel for the Waqf Board



submitted that petitioners have purchased the Waqf property without permission of Waqf Board which is not permissible in the eye of law and are *void ab initio*. It is pleaded in the counter affidavit filed by the opposite party no. 2, (*Mutawalli* of Sogra Waqf Estate), that despite the service of notice, no reply was filed by the petitioners in the eviction application and after compliance of service of notice and due to non-appearance of the petitioners in the case before the learned Tribunal, the learned Tribunal rightly proceeded for *ex parte* hearing. In reply to paragraph 8 of the the Civil Revision, it is stated that the Title Suit No. 43 of 1985 was with respect to some other relief than the portion of land of the petitioners, which were illegally occupied. It is further stated that against the judgment and decree passed in Title Suit No. 43 of 1985, an appeal has been filed which is pending before the District & Sessions Judge, Nalanda at Biharsharif.

8. In view of specific assertion made by the petitioners that no notice whatsoever was ever served upon petitioners as well as perusal of the impugned order makes it evident that although it has been indicated that the notices issued to the opposite parties have not been returned to the Board and it can be presumed to be served at the addresses. It is



further held by the Waqf Tribunal that in spite of service of notices, they did not appear, so, the case was posted for *ex parte* hearing. The order does not indicate anywhere as to whether and by which mode the notices were issued to the petitioners. The only fact indicated in order is that notices were issued upon the opposite parties-petitioners.

9. On the basis of the discussion made above, I am of the opinion that the learned Tribunal has clearly erred in not recording a finding as to when and by which mode notices were issued to the petitioners 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 petitioners and as such, the impugned order is clearly violation of the principles of natural justice.

10. In the facts and circumstances of the case, this revision application is allowed and the impugned order dated 26.09.2017 passed by the learned Bihar State Waqf Tribunal, Patna in Eviction Application No. 04 of 2017, is hereby set aside.

11. The Eviction Application No. 04 of 2017 is remanded to the learned Tribunal for deciding the case afresh on merit. Since the petitioners have already appeared and



challenged the impugned order before this court, the notices upon the petitioners in Eviction Application No. 04 of 2017 is deemed as sufficient. The parties shall appear before the Waqf Tribunal on 11.09.2023. Thereafter, the Bihar State Waqf Tribunal shall proceed in accordance with law.

12. The Waqf Tribunal is directed to decide the Eviction Application No. 04 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)

Gaurav Kumar/-

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