

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.139 of 2019

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1. Smt. Bimla Devi Wife of Late Ganauri Ram Resident of Mohalla- Loha Ka Pool, Near Masjid of Assur Khan, Police Station- Mehdiganj, Patna City, District- Patna.
 2. Sri Suraj Kumar Son of Late Ganauri Ram Resident of Mohalla- Loha Ka Pool, Near Masjid of Assur Khan, Police Station- Mehdiganj, Patna City, District- Patna.
 3. Sri Sikandar Kumar Son of Late Ganauri Ram Resident of Mohalla- Loha Ka Pool, Near Masjid of Assur Khan, Police Station- Mehdiganj, Patna City, District- Patna.
 4. Sri Manoj Kumar Son of Late Ganauri Ram Resident of Mohalla- Loha Ka Pool, Near Masjid of Assur Khan, Police Station- Mehdiganj, Patna City, District- Patna.

... .. Petitioners

Versus

1. Bihar State Suni Waqf Board Haj Bhawan, Harding Road, Ali Imam Path, Police Station- Sachivalaya, Patna.
2. Md. Akhtar Ashraf, Secretary of Managing Committee of Waqf Estate Asur Khan Ki Mashid, Wakf No. 1906, Loha Ka Pool, Noon Ka Chauraha, Police Station - Khajekalan, Patna City, Distt. - Patna.
3. Chief Executive Officer Bihar State Suni Waqf Board, Haj Bhawan, Harding Raod, Ali Imam Path, Police Station- Sachivalaya, Patna.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar, Advocate
For O.P. Nos. 1 & 3	:	Mr. Md. Helal Ahmad, Advocate
For O.P. No. 2	:	Mr. Syed Asher Najmi, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

16 06-09-2023

This Civil Revision has been filed under Section 83 (9) of the Waqf Act, 1995 against the judgment and order dated 13.02.2019 passed by the Bihar State Waqf Tribunal in Title Eviction Suit No. 37 of 2009 whereby the eviction suit has been decreed against the defendants-plaintiffs and further directed to pay the arrears of rent from January, 2001 to October, 2002 and



till date at the rate of Rs. 40/- per month to the plaintiffs and to vacate the suit premises within 45 days from the date of order failing which they shall be held liable to pay damages at the rate of Rs. 5000 per day.

2. The said Title Eviction Suit No. 13 of 2003 was filed by the Bihar State Sunni Waqf Board as plaintiff no. 1, Md. Zahid, Secretary of the Managing Committee of Asur Khan Ki Masjid, Waqf No. 1906, Lohe ka pool Noon ka chauraha, Police Station - Khajekala, Patna City, Patna for payment of arrears of Rs. 800/- being rent for the month of January, 2001 to October, 2002 of the suit premises and also for vacating the suit premises and for grant of injunction.

3. The case of the plaintiffs, in short, is that M.S. Plot No. 2119, Sheet No. 293/213, Ward No. 25 old and 29 new, Circle No. 124 situated at Mohalla Mansa Ram ka Akhada commonly known as lohe ka pool, police station Mehendiganj, Patna City, Patna is recorded as Masjid measuring 50 decimals in municipal survey khesara prepared on 18.12.1933 on which ancient mosque is situated which is known as Asur Khan Ki Masjid bearing M.S. Plot No. 2116, Sheet No. 293/213, Circle No. 125, Ward No. 25 old and 29 new. Holding No. 3 recorded as Bheeth in occupation of Sheikh Abdul Rehman measuring 48



decimals as his residential house of municipal survey Plot No. 2116 bearing Holding No. 3, Circle No. 124 as aforesaid. The house fell down before municipal survey and became *parti* and vegetables were grown by him occasionally during rainy season. After the earthquake, Abdul Rehman constructed a building over the said land comprising of *veranda (osara)*, rooms and sahan and dedicated the same to the benefit of the mosque of Asur Khan Ki Masjid. It is contended that Jagdeo Narain took building on rent for his residence for running business of firewood etc. It is further contended that M.S. Plot No. 2117, Ward No. 25, Circle No. 124, Sheet No. 213 of the said mohalla is also recorded as Bheeth under the occupation of Sekh Mehendi Hasan and M.S. Plot No. 2118 has been recorded as Qabristan measuring two decimals. The said plots after municipal survey were dedicated by its owners as Waqf for the benefit of Asur Khan Ki Masjid which is under possession of the said mosque. Shah Abdul Rehman was the Mutwalli of the said mosque and after his death Azhar Khan became Mutwalli of the said mosque, who managed the Waqf property dedicated for the benefit of mosque. Saiyad Nayim Khan filed Eviction Suit bearing Tile Suit No. 58 of 1971 in the court of Munsif, Patna City against Shri Ramji Chauhan son of late Shri Jagdeo



Narayan, who claimed his possession and right over it and on hearing the suit was decreed *ex-parte* on 26.06.1974 and possession was delivered to the Mutwalli of the said Asur Khan Ki Masjid. The aforesaid property of Asur Khan Ki Masjid bearing Waqf No. 1906 was recorded as Waqf property in the office of Bihar State Sunni Waqf Board. Plaintiff No. 1 and Managing Committee headed by Secreatry and President was constituted by the Waqf Board to administer and look after the affairs of Waqf Estate. The defendant as well as some other persons were inducted as tenant in respect of one kachcha room each standing over land of Asur Khan Ki Masjid by the then Secretary of the Managing Committee of Waqf No. 1906 and the monthly rent for the tenanted room was Rs. 40/- payable to the Secretary of Managing Committee of Waqf No. 1906 (Secretary-plaintiff no. 2).

4. It is pleaded that on 10.09.1990, there was a meeting of members of Managing Committee of Asur Khan Ki Masjid in presence of defendant as well as other tenants and it was resolved unanimously that defendant along with others will pay the monthly rent punctually to the Secretary of the mosque and vacate the tenanted premises whenever it is needed for the development of the mosque. The Managing Committee of Asur



Khan Ki Masjid and Waqf Board (Plaintiff Nos. 2 and 1) respectively have decided to develop the mosque due to increase of numbers of namazis and to make construction of market by demolishing the rooms under the tenancy for enhancing the income of the waqf estate so that the mosque may be maintained properly and as such the premises under the tenancy of defendant was required by the plaintiffs for the necessity of waqf estate no. 1906, namely, Asur Khan Ki Masjid. Smt. Chandra Munni Devi, widow of Munnu Ram, one of the defendants has given in writing to plaintiff no. 2 to vacate the room under her tenancy.

5. The specific case of the plaintiff's is that the defendant had not paid monthly rent from January, 2001 to October, 2002, total 22 months at the rate of Rs. 40/- per month amounting to Rs. 880/- was in arrears of rent and she was defaulter. A notice dated 24.12.2001 was sent on behalf of the plaintiffs through their counsel to the defendant to clear the arrears of rent and hand over the vacant possession of the tenanted premises under her tenancy to plaintiff no. 2 with registered acknowledgement due which was received by the defendant.

6. On refusal to vacate the suit premises, the eviction



suit bearing Title Eviction Suit No. 13 of 2003 was filed before the Munsif, Patna City. Later on, defendant nos. 1 and 2 were substituted in place of Ganauri Ram as his heirs. On summons the defendant no. 1 Most. Bimla Devi appeared on 27.07.2006 and filed her written statement on 27.07.2006 denying the claim of the plaintiff-Bihar State Sunni Waqf Board. It is contended that the suit has been filed by the plaintiff to acquire title over the suit property. Hence, until plaintiffs do not pay *ad valorem* court fee on the market value of the suit property, suit cannot proceed and may be dismissed for want of proper court fee. The defendant has claimed the right title and interest on the basis of adverse possession. It is further contended that these defendants are coming in peaceful possession of the property on which eviction has been sought for from twenty years. It has also denied the relationship of landlord and tenant between the defendants and plaintiff. The defendants-petitioner pleaded that the hut on which eviction has been brought is own property of the defendants in which they are residing since several twenty years. The hut of these defendants is not on the plot of Masjid. The hut of these defendants is situated over plot no. 2116, which was under the ownership of Sheikh Abdul Rahman, ex-landlord of the locality. The hut of these defendants has no concern with



mosque M.S. Plot No. 2119. The defendants further claim the suit property on the basis of Hukumnama granted by ex landlord, namely, Sheikh Abdul Rahman to their grandfather, namely, Kuldeep Ram in the year 1941. The hut of the defendants is rent free in the light of Hukumnama granted by ex landlord, namely, Sheikh Abdul Rahman. The defendants had no knowledge in respect of mutation proceedings which is bala-bala proceedings of the plaintiff to create evidence for eviction. Neither notice of mutation was served on these defendants nor information was given by the committee created by local Mohammadan to grab the property of these defendants. It is further pleaded that it is absolutely wrong to say that defendants as well as some other persons were inducted as tenant over land of Asur Khan Ki Masjid on monthly rental payable to the Secretary of Managing Committee. It is further pleaded that the instant title suit was filed against the dead person and it is not maintainable. Hence, the suit is fit to be dismissed on preliminary issue because Ganauri Ram, S/o Late Sukhu Ram, had died on 16.10.1999, much prior to institution of the suit.

7. The said eviction suit was transferred to the Waqf Tribunal under Section 85 of the Waqf Act which was received on 03.10.2007 in the Tribunal from the learned Munsif, Patna



City and Title Eviction Suit No. 13 of 2003 was re-numbered as Title Eviction Suit No. 37 of 2009.

8. Learned Bihar State Waqf Tribunal has framed the following issues on the basis of pleadings of the parties:-

- (i) Whether the suit is maintainable?
- (ii) Whether the land and kachcha hut of phoos of plot no. 2116, 2117, 2118 and 2119 at sheet no. 293/213 ward no. 25 old 26 new Circle no. 124 situated at Mohalla Mansa Ram ka Akhara now lohe ka pool, P.S-Mehdiganj Patna City, Distt-Patna belong to Waqf Estate no. 1906 known as Aashu Khan ki Masjid?
- (iii) Whether there is relationship of landlord and tenant between the plaintiff and defendant?
- (iv) Whether the defendant defaulted payment of monthly rent @ Rs. 880/- per month since January 2001 to October 2002 and onwards?
- (v) Whether the defendant is fit to be evicted from the suit premises?
- (vi) Whether the plaintiff is entitle for any other relief or reliefs?

9. Learned Tribunal took up all the issues together for



its convenience and came to the conclusion that the suit property is the Waqf property of Waqf Estate No. 1906 Masjid Asur Khan and Bimla Devi was the tenant in the suit premises and she defaulted the payment of rent since long and she along with her sons, namely, Suraj Kumar, Sikandar Kumar and Manoj Kumar are the encroachers of the suit premises. It is further held by the learned Tribunal that the defendants were liable to pay the arrear amount of rent since January, 2001 to October, 2002 and till now @ Rs. 40/- per month to the Mutwalli or the Board and they are also liable to be evicted from the suit premises. Further, it is held that there is genuine necessity of expanding mosque due to increase in number of namazi for which suit land / premises is required to be vacated.

10. The defendants-petitioners being aggrieved and dissatisfied with the order of the learned Tribunal, preferred this Civil Revision Application challenging the maintainability of the same.

11. Learned counsel for the petitioners has submitted that the suit against the dead person in the Court of learned Munsif, Patna was bad in law. It is also submitted that the learned Waqf Tribunal did not take steps provided for appearance under the provisions of Civil Procedure Code for



appearance of petitioner nos. 2 to 4. It is further submitted by learned counsel for the petitioners that learned Tribunal failed to appreciate that the eviction suit itself is not maintainable before the Tribunal. The word 'encroacher' in definition part of the Waqf Act, 1995, has been added with effect from 01.11.2013 and as such, the petitioners under the provisions of the Waqf Act, 1995, cannot be said to be encroacher since the suit was instituted in the year, 2003. It is contended that the amendment made in Section 83 of the Waqf Act, 1995, would not be applicable in the present proceedings and same will have prospective effect. The finding with regard to personal necessity is perverse.

12. On the other hand, Bihar State Sunni Waqf Board has filed counter affidavit on behalf of the opposite party nos. 2 to 4 stating therein that the property in question has been registered in register of Bihar State Sunni Waqf Board as Waqf Estate No. 1906, Aashu Khan Ki Masjid, Patna. It is contended that the defendants are trying to grab the waqf property. On the basis of adverse possession, learned counsel for the Waqf Board submitted that the said eviction suit was initially filed before the learned Munsif, Patna City against the husband of the petitioner no. 1 and father of the petitioner nos. 2 to 4 for payment of



arrears of rent and delivery of vacant possession of a Waqf property consisting Kuchha Hut of Phoos situated over the suit land. The opposite party had no knowledge about the death of Ganauri Ram and as soon as they came to know about the death of Ganauri Ram, a substitution petition was filed which was allowed. Thereafter, notices were issued to his substituted heirs which was duly served but petitioner nos. 2 to 4 knowingly did not appear in the proceeding of Title Eviction Suit No. 13 of 2003 before the learned Munsif, Patna City. The mother of the petitioner nos. 2 to 4 appeared and filed their written statement and denied the factum of tenancy. It is further contended that petitioners have not deliberately adduced any documentary as well as oral witnesses in support of their claim and even they have not cross-examined the witnessess produced by the plaintiffs / opposite parties. The plaintiffs have filed altogether eight documents i.e., Ext.-1 to Ext.-8 and five witnesses have been adduced by the plaintiffs / opposite parties. Learned counsel for the Waqf Board has submitted that the order sheet shows that petitioner appeared before the Tribunal in Eviction Title Suit No. 37 of 2009 on 26.07.2010 and also on some other dates. On 10.05.2013, she appeared and prayed for time and thereafter, she left *pairvi* and did not produce any documentary



or oral evidence. The learned Tribunal decided the eviction suit on the basis of material evidence on record in favour of the plaintiffs / opposite parties. He further submitted that in view of the decision of the Hon'ble Supreme Court in case of ***Rajsthan Waqf Board Vs. Devki Nandan Pathak*** reported in ***2017 (2) PLJR 463***, in which the jurisdiction of the tribunal has been dealt with when the nature of the suit property is disputed of being a Waqf property then only subsequent issue based upon the same come within the jurisdiction of tribunal.

13. Having heard counsel for the parties and on perusal of the impugned order, it is manifest that the plaintiffs / opposite parties have examined altogether five witnesses and the defendants / petitioners have not cross-examined them. Defendants / petitioners have not adduced any witnesses.

14. The witness PW-1, namely, Md. Bashir in his examination-in-chief stated that the suit property is the part of Asur Khan Ki Masjid, which is Waqf estate's property bearing Waqf Estate No. 1906. He further stated that he was the Member of the Managing Committee of Asur Khan Ki Masjid constituted by Bihar State Suni Waqf Board and at present Md. Akhter is the Secretary. The defendants are the tenants in the suit premises. In answer to the Court's question, she says that Bimla



Devi is not paying rent and she has stopped the payment of rent since ten years. She is sweeper in corporation. PW-2, Md. Zahid Ansari, stated in his examination-in-chief that earlier he was the Secretary of the Committee of Asur Khan Ki Masjid of Waqf Estate No. 1906. He further deposed that the defendants are the tenant of the suit premises. He further deposed that the land of plot no. 2119, Sheet No. 293/213 measuring 50 decimals, which have been mentioned in survey as Masjid which was finally published on 18.12.1933. He further stated that plot no. 2116, Sheet No. 293/213, Circle No. 125, Ward No. 25(old) 29 new Holding no. 3 measuring 48 decimals is mentioned in the survey as Bheeth in the name of Sheikh Abdul Rahman. The said Abdul Rahman dedicated the said plot in Waqf to the Mosque. He further says that the land of plot no. 2117, Sheet no. 213, Ward no. 25, Circle no. 124 was mentioned in the survey as Bheeth in the name of Sheikh Mehdi Hasan while land of plot no. 2118 as Qabristan measuring 2 decimals has also been dedicated to Waqf to Asur Khan Ki Masjid. Further, it is stated by him that the aforesaid properties have been registered in the Sunni Waqf Board as Waqf Estate No. 1906. P.W. 3, Md. Shamim Azad, deposed that he used to perform Namaz in the mosque and he is also *pairvikar* of this case. The defendants are living in the land



situated north of Masjid in the land of Masjid as tenant. He further says that due to increase in the number of Namazi, the mosque requires to be expanded. P.W. 4, namely, Allaudin Ansari also deposed and supported the case of the plaintiffs. P.W. 5, namely, Md. Akhtar Ashraf, who is the Secretary of the Committee of Asur Khan Ki Masjid, deposed that this suit premises is the part of Asur Khan Ki Masjid. He further says that the disputed M.S. Plot No. 2119, Survey Plot No. 1933 is mentioned in the name of Masjid over which a mosque is in existence. He further says that the land of plot no. 2116 is mentioned as Bheet in the Survey Khesra measuring 48 decimals in the name of Abdul Rahman, who dedicated to Waqf in Masjid Asur Khan. Plot no. 2117 is also mentioned in survey as *Bheet* in the name of Sheikh Mehdi Hasan and plot no. 2118 measuring 2 decimal is mentioned as Qabristan. He stated that the Managing Committee of Asur Khan Ki Masjid gave the disputed premises to the defendant on monthly rent of Rs. 50/- and she used to pay rent. The witness has supported and corroborated the case of the plaintiff that the defendant Bimla Devi was monthly tenant of the premises of Asur Khan Ki Masjid and she defaulted the payment of the rent. Exhibit-3 to Exhibit 3/B are the municipal rent receipt in the name of



Mutwalli Hajjan Miyan. Exhibit-4 is the acknowledgement receipt. Exhibit-5 is the certified copy of the plaint of Title Suit No. 58 of 1971, which was filed against the defendant no. 1, namely, Ram Ji Chauhan for eviction from the premises of Asur Khan Ki Masjid who claimed his possession and right over it and on hearing, the suit was decreed on 26.06.1974 ex parte and possession was delivered to the Mutwalli, who came in possession thereof. The said Mutwalli Saiyad Naim Miyan was mutated and his name was entered over M.S. Plot No. 2117, 2118 and 2119 being holding no. 1, 2, 3 & 4 respectively as Mutwalli.

15. Considering the pleadings of the parties, it appears the Managing Committee inducted the defendants as a tenant on monthly rent of Rs. 40/- payable to the Secretary of Managing Committee of Estate No. 1906. Exhibit-8 is the certified copy of the judgment passed in T.S. No. 58 of 1971 by which order of eviction was passed against the encroacher, namely, Ram Ji Chauhan from the properties and premises, which was the subject matter of the suit. All the documents and evidence adduced by the plaintiff proves prima facie that the premises in question is a Waqf property in which the defendants are tenant and they defaulted in payment of rent. The necessity of the suit



premises for the expansion of Masjid is proved by the plaintiffs in their evidences.

16. This Court places its reliance on the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of ***Kasthuri Radhakrishnan*** wherein, it is held that the revisional court has only to see whether order for eviction is according to law or not. Their Lordships have observed as follows:-

*“.... So far as the issue pertaining to exercise of revisional jurisdiction of the High Court while hearing revision petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the Constitution Bench of this Court in **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh (2014) 9 SCC 78**. The Hon'ble High Court has held that:*

“... the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its



power as an appellate power to re-appreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity...”

17. This Court is of the view that the impugned order passed by the learned Waqf Tribunal, Bihar, is completely in accordance with law and the same does not require interference of this Court.

18. Accordingly, this Civil Revision Application is dismissed.

(Khatim Reza, J)

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