

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.160 of 2018

Abdul Haque, Son of Late Abdul Hai, Ex. Mutawalli, Soghra Wakf Estate No. 2, Biharsharif, presently Naib Awwal, resident of Mohalla Kashi Takiya, P.S.- Laheri, P.O.- Biharsharif, District Nalanda at Biharsharif.

... .. Petitioner

Versus

1. The State Of Bihar through District Magistrate-cum-Collector, Nalanda at Biharsharif.
2. The District Welfare Officer, Nalanda at Biharsharif. Bihar
3. The Circle Officer, Biharsharif, District Nalanda at Biharsharif.
4. The Bihar State Sunni Wakf Board, through Chief Executive Officer, Bihar State Sunni Wakf Board, 34, Ali Imam Path, Patna.
5. Soghra Wakf Estate No.2 through its Mutawalli S.M. Sharaf, Son of Late Abu Naser, having its Office at Mohalla Laheri, P.S. Laheri, P.O.- Biharsharif, District- Nalanda at Biharsharif.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Syed Qaisar Hasan, Advocate
	:	Mr. Firoz Raza, Advocate
For the Opposite Parties	:	Mr. Md. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

11 16-03-2023 Heard learned counsel for the petitioner and learned counsel for the opposite parties.

2. This Civil Revision application has been filed against the order dated 20.09.2018 passed in Miscellaneous Case No. 06 of 2017 by the learned Waqf Tribunal, Patna, whereby the miscellaneous petition filed by the then *Mutawalli* of the Waqf Estate for declaring the deed of gift dated 17.02.2004 as null and void has been allowed and the Tribunal cast aspersions on the petitioner which has been mentioned in 1st



paragraph of page no. 6 of the impugned order. The learned Tribunal observed that the Abdul Haque (petitioner) executed the deed of gift in favour of Governor of Bihar through District Magistrate, Nalanda in respect of 50 decimals of land of Soghra Waqf Estate for construction of minority hostel. The execution of said deed of gift is illegal act committed by Abdul Haque, the then *Mutawalli* of Bibi Soghra Waqf Estate and appears to have been committed for personal gain. The Tribunal has also held that such person namely Abdul Haque do not deserve to be inducted in the Management Committee of the Bibi Soghra Waqf Estate and his continuity in the Management Committee of the Bibi Soghra Waqf Estate will be detrimental to the Waqf Estate and if he holds any post in the Management Committee or he is a member of Management Committee then the Board was directed to remove him from such post or membership at once and if the Board still allow him to continue in the Committee of Bibi Soghra Waqf Estate, it will be an illegal act causing damages to Waqf Estate for which the Board shall be held liable for damages to be paid to the Waqf Estate.

3. Aggrieved by the aforesaid observation, the petitioner filed the instant revision application. Later on, the petitioner has been removed from the post of Naib Awal



(Incharge) of Soghra Waqf Estate No. 2 *vide* memo no. 1095 dated 28.03.2019 pursuant to the direction of Waqf Tribunal passed in Miscellaneous Case No. 06 of 2017.

4. The instant Revision Application arises out of Miscellaneous Case No. 06 of 2017 which was filed by the Soghra Waqf Estate through its the then *Mutawalli*, Md. S.M. Sharaf, to set aside the gift deed dated 17.02.2004.

5. The case of the Soghra Waqf Estate, in short, is that in the year 2004 Abdul Haque (petitioner) was working as Mutawalli of Soghra Waqf Estate. The Sograh Waqf Estate Committee was also constituted by the Waqf Board and the same was functioning for assistance and guidance to the Soghra Waqf Estate and its Mutwalli for proper management of the Waqf Estate. Further case of the Waqf Estate is that the Ex-*Mutawalli* of the said Waqf Estate, namely, Abdul Haque, under the direction as mentioned in the registered gift deed executed gift deed with respect to 50 decimals land of Waqf property situated in Mauza Mahe Khandak, Revenue *Thana* No. 116, Mohalla–Garhpar, having *Khata* No. 78, Plot No. 274 admeasuring an area of 1.03 acre of *parti raiyati* land in the town and sub-division of Biharhsarif, District- Nalanda, which belonged to Soghra Waqf Estate in favour of the State of Bihar



through the District Magistrate *vide* Registration No. 55 of 2004. It is further case of the then *Mutawalli* that *Waqfnama* mandates that a *Mutawalli* had no right to make any alienation or mortgage or *Mukarrari* or *Zarpeshgi* lease or permanent settlement or temporary settlement of any Waqf property or any portion of the Waqf property. The Waqf land so gifted in favor of the Governor of Bihar through the District Magistrate, Nalanda for construction of Minority Student Hostel in Bihar Sharif under the scheme of the Government but since 2004 till date despite lapse of 13 years the property so gifted for specific purpose of construction of hostel was not acted upon by the Opposite Party Nos. 1 to 3. It is contended that the gift deed is executed without getting any consideration amount for such transfer which is barred by the terms of the *Waqfnama*. The action of the petitioner is illegal, arbitrary and against the wishes of *waqifs*. It is further contended that the gift deed dated 17.02.2004 executed by the then *Mutawalli* (petitioner) is barred under paragraph 10 of the *Waqfnama* and prayed for setting aside the gift deed.

6. The Bihar State Sunni Waqf Board on its appearance has filed its reply in which it is submitted that pursuant to the request made by the petitioner as he was the then



Mutawalli of Soghra Waqf Estate No. 02, Bihar Sharif, Nalanda, the Board has accorded sanction *vide* its resolution No. 2 dated 28.04.2004, to construct a hostel for minority students on 50 decimals of land, pertaining to *Khata* No. 78, Plot No. 274 & 275 and further, it was resolved that the construction work will be done under the supervision of the Sogra Waqf Committee. The said decision was communicated through letter No. 226 dated 30.01.2004 (Annexure-2) issued under signature of the Secretary of the Sunni Waqf Board. Further, learned counsel for the Sunni Waqf Board submits that the Board has never accorded any sanction regarding gift or transfer of any property of Soghra Waqf Estate No. 2 rather pursuant to request made through letter No. 57 dated 03.11.2003 by the present petitioner, the Soghra Waqf Estate accorded sanction *vide* its resolution No. 2 dated 28.02.2004, to construct a hostel for minorities on 50 decimals. It is further submitted that the then *Mutawalli* had no right to make any alienation or mortgage or *Mukarrari* or *Zarpeshgi* lease or permanent settlement or temporary settlement of any Waqf property or any portion of the Waqf property. The petitioner has executed gift deed in favour of Governor of Bihar through Collector, Nalanda by a registered gift deed dated 17.02.2004 was an illegal act committed by the



petitioner and for the same the Board has never accorded sanction or approval.

7. It is apparent from the record as well as Annexure-2 of the instant Revision application that the Board has accorded sanction *vide* its resolution No. 2 dated 28.01.2004 to construct a hostel for minority students strictly on 50 decimals of land pertaining to Khata No. 78, Plot No. 274 & 275 and it is also admitted fact that the said hostel was not constructed and the said land is still in possession of the Bibi Soghra Waqf Estate and deed of gift, which was executed on 17.02.2004 in favour of Governor of Bihar, is not in consonance with resolution No. 2 dated 28.01.2004 taken by the Bihar State Sunni Waqf Board. The petitioner transferred the said plot in favour of Governor of Bihar for construction of hostel for minorities students under Government Scheme spent by the Government. From the perusal of Annexure-5 dated 07.07.2000 which is letter of the Minority Welfare Department, it is apparent that in a meeting dated 03.07.2000 held in the office of State Minister, Department of Minority Welfare which was attended by the State Minister of the State Ministry Welfare Department and Chairman both Shai and Sunni Waqf Boards, wherein, the question of transfer of non-government lands was resolved



especially with regard to construction of minority hostel funded by the State Government. The proposal was accepted by both the Chairman that permission for transfer of Waqf lands for the said purpose in the name of Governor of Bihar would be granted soon and letter to that effect would be sent soon and it was also finalized that in case of any pending permission for the said purpose, the same would be sent at the earliest by the concerned Boards granting permission.

8. From perusal of the impugned order, it appears that the petitioner, Abdul Haque, had filed only *vakalatnama* and his counsel appeared on behalf of the petitioner before the Tribunal had not filed any reply and hence, the Miscellaneous Petition proceeded *ex-parte* against him. The Opposite Party No. 2 as well as the Bihar State Sunni Waqf Board in their reply have admitted that the land mentioned in the Miscellaneous Petition is still in possession of Soghra Waqf Estate and was never in possession of the Government of Bihar. The District Minority Welfare Officer, Nalanda (Opposite Party No. 2) has also admitted that steps have been taken by the District Magistrate, Nalanda for return of the land to Soghra Waqf Estate.

9. It is admitted case of the parties that the Waqf land, which was gifted in favor of the Governor of Bihar through the



District Magistrate, Nalanda, has not been acted upon till date.

10. Learned counsel for the petitioner submitted that the allegation against the petitioner is false and baseless. Learned counsel further submitted that notwithstanding anything contained in the gift deed, any gift, sale, exchange or mortgage of any immovable property, which is Waqf property, shall be void unless such gift, sale, exchange or mortgage is effected with prior sanction of the Waqf Board. In this connection, learned counsel has placed the gift deed dated 17.02.2004. The plain reading of the said gift deed is self-explanatory and it categorically states about the meeting dated 23.01.2001 of the Soghra Waqf Estate Committee whereby it was decided under the then *Mutawalli* Janab Mazhar Alam, which was attended by 15 members out of 21 members, and it was resolved to seek permission from the Waqf Board for construction of Minority Boys Hostel over 50 decimals of land appertaining to *Khata* No. 78, Plot No. 274. It is further submitted that the aforesaid resolution of Soghra Waqf Estate Committee was sent to Waqf Board for its permission and whereafter the Waqf Board granted permission vide letter dated 30.01.2004. The aforesaid resolution dated 23.01.2001 was resolved under the *Mutawalliship* of Janab Mazhar Alam and



the permission was granted for construction of the Minority Boys Hostel over the said land by the Waqf Board dated 30.01.2004 as mentioned in gift deed dated 17.02.2004 keeping in view the result of meeting held on 03.07.2000 (Annexure-5) whereby Chairman of both the Boards had agreed to transfer Waqf lands for the construction of minority hostel in the name of Governor for the said purpose. It is contended that the Waqf Board has the power of granting permission for gift, sale, mortgage, lease etc. of the Waqf property for noble cause and the Tribunal has no jurisdiction to over-reach the same.

11. Learned counsel for the petitioner further submitted that the learned Tribunal has passed the whimsical order by stating in 1st paragraph at page no. 6 of the impugned order that “*there is no provision in the Waqf Act to execute deed of gift in respect of waqf property by a Mutawalli*”. The learned Tribunal failed to appreciate that *Mutawalli* has not executed the deed of gift on its own, rather, the same was based on permission granted by the Board to Soghra Waqf Estate in which the petitioner was not present as a *Mutawalli* or otherwise.

12. It is vehemently submitted that the learned Tribunal has passed erroneous order exceeding its jurisdiction



by directing the Board to remove the petitioner. It is submitted that the Tribunal was required to look into the relief claimed by the Opposite Party No. 5 and the learned Tribunal could have allowed or dismissed the case but it has no jurisdiction to go beyond the relief claimed in Miscellaneous Case No. 06 of 2017 and the finding in this regard is redundant for the simple reason that the said deed of gift did not see the light of the day and that even otherwise the petitioner cannot be held responsible when he was not a *Mutawalli* at the time of the meeting of Soghra Waqf Estate Committee dated 23.01.2001. However, the petitioner has executed the gift deed dated 17.02.2004 after the Waqf Board granted permission for construction of minority hostel *vide* Letter No. 226 dated 30.01.2004 and the gift was executed on the basis of annexure 5 dated 07.07.2000, issued by the Deputy Secretary, Govt. of Bihar.

13. Learned counsel for the petitioner further submitted that the petitioner was initially represented by Mr. Janki Nandan Advocate, who died on 12.11.2017. Thereafter, Mr. Nasar Warsi, Advocate was engaged and entire relevant documents were handed over to him for filing reply in Miscellaneous Case No. 06 of 2017, but unfortunately, he too died on 14.01.2018. Due to death of Mr. Nasar Warsi, Advocate,



proper steps could not be taken. It is further submitted that during the pendency of the instant revision application, the Waqf Board removed the petitioner from the post of 'Naib Awal' (Incharge *Mutawalli*) of Soghra Waqf Estate No. 2 *vide* office order dated 28.03.2019 pursuant to the direction of the Tribunal passed in Miscellaneous Case No. 06 of 2017 *vide* order dated 20.09.2018.

14. It is further submitted that the petitioner of the Miscellaneous Case No. 06 of 2017 has relied upon the order dated 23.09.2011 passed in Waqf Appeal No. 15 of 2011. The petitioner being aggrieved by the order passed in Waqf Appeal No. 15 of 2011, filed C.W.J.C. No. 19075 of 2011 before this Court whereby this Court granted stay of the order to the extent the petitioner was prejudiced by the order passed in Waqf Appeal No. 15 of 2011. It is further stated that C.W.J.C. No. 19075 of 2011 was finally disposed on 15.07.2013 with a direction to constitute a Managing Committee of the Soghra Waqf Estate. The said Managing Committee of the Soghra Waqf Estate was constituted on 17.09.2013 and modified *vide* order dated 20.10.2013, whereby, the petitioner was appointed Naib Awal (Incharge). The committee constituted on 17.09.2013 was challenged by one Rayazul Haque before this Court, which



remanded the matter to the Waqf Tribunal, wherein Waqf Appeal No. 01 of 2014 was filed by the aforesaid Rayazul Haque and the same was dismissed by the learned Tribunal on 23.06.2014. In order dated 23.06.2014, it was held that disqualification of the petitioner was not for good rather only for five years and when limitation of five years is over, his ineligibility ends as is evident from Section 64(8) of the Waqf Act, 1995. Further, it is clear that in order dated 20.09.2018 passed in Miscellaneous Case No. 06 of 2017, the order was passed in Waqf Appeal No. 01 of 2014 was not taken note of and the order was passed on the basis of order dated 23.09.2011 passed in Waqf Appeal No. 15 of 2011. It is, therefore, apparent that order dated 20.09.2018, passed in Miscellaneous Case No. 06 of 2017 is erroneous.

15. From the perusal of the records and on analyzing the impugned order, it is manifest that the gift deed dated 17.02.2004 in favour of the Governor of Bihar through the District Magistrate, Nalanda, for construction of Minority Students Hostel under the Government Scheme was not in any manner for personal gain of the *Mutawalli*. Moreover, the said gift deed was executed on the basis of resolution taken by the committee of Soghra Waqf Estate, whereafter, permission was



granted for construction of minority hotel in view of letter dated 07.07.2000 (annexure-5) of the Minority Welfare Department, Patna and letter dated 30.01.2004 (Annexure-2) of the Bihar State Sunni Waqf Board. Therefore, action of the *Ex-Mutawalli*/petitioner was in conformity with the law. Moreover, the State of Bihar never took possession of the land enumerated in the gift deed dated 17.02.2004.

16. The learned Tribunal, on the basis of gift deed dated 17.02.2004, has cast aspersion on the petitioner as well as debarred him from holding any post/position in Soghra Waqf Estate is manifestly without analyzing the fact and law with regard to gift deed dated 17.02.2004 and resolution of the Managing Committee of Soghra Waqf Estate dated 25.01.2001 as well as permission granted by Bihar State Sunni Waqf Board *vide* letter dated 30.01.2004 for construction of minority hostel, the basis being letter dated 07.07.2000 (Annexure-5) issued by the Deputy Secretary, Govt. of Bihar and passed impugned order dated 20.09.2018 and consequently Bihar State Sunni Waqf Board also passed office order dated 28.03.2019 (Annexure-8), whereby the petitioner was removed from the possession of Naib Awal (Incharge) of Soghra Waqf Estate.

17. Thus, the impugned order dated 20.09.2018 is bad



in law and is, accordingly, set aside. Consequently, the order passed by the Bihar State Sunni Waqf Board dated 28.03.2019 on the basis of resolution No. 9 dated 25.03.2019, in the light of order dated 20.09.2018, passed by the learned Waqf Tribunal has no effect.

18. It is admitted case of the parties that no physical possession of the Waqf land has been effected and as there is no delivery of possession in favour of the Governor through the District Collector (Donee) immediately after gift and therefore, the essential ingredients of possession of the gifted land in question, has not taken place and therefore, the gift deed dated 17.02.2004 itself is not valid.

19. Accordingly, this Civil Revision Application is allowed with the aforesaid observations.

(Khatim Reza, J)

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