

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5049 of 2021

1. Sateesh Kumar @ Satish Kumar Son of Late Ramdeo Singh Resident of Mauza Narayanpur P.S. Madhuban, Presently resident of Mohalla Motiahri, Gopalpur (Raja Bazar), P.S. and Anchal Motihari, District East Champaran.
2. Arti Kumari Wife of Jitendra Kumar , D/o-Ram bau Prasad , Resident of Mauza Jaisinghpur, Tola Karmawa, P.S. and Anchal Turkaulia, District-East Champaran.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretary, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretary, Patna.
3. The Additional Chief Secretary, Registration and Excise Department, Government of Bihar, Patna.
4. The Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
5. The Inspector General Of Registration and Excise Commissioner, Government of Bihar, Patna.
6. The Joint Secretary, Registration and Excise Commissioner, Government of Bihar, Patna.
7. The District Magistrate, Motihari.
8. The Registrar, Motihari Registration Officer, East Champaran at Motihari.
9. The Bihar State Shia Wakf Board, haj Bhawan, 2nd Floor,, 34, Ali Imam Path, Harding Road, Patna-800001.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Shardanand Mishra, Advocate Mr. Dhananjay Kumar Gupta, Advocate
For the Respondents	:	Mr. Sanjeet Kr. Singh AC to AAG 6
For the Wakf Board	:	Md. Anjum Akhtar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 23-04-2024

1. This application has been filed on behalf of the



petitioners for quashing the Letter No. 28 dated 07.04.2015 of the Chief Secretary, Government of Bihar, Patna (not in possession of the petitioners) whereby the Chief Secretary, Government of Bihar has written to the Registering Authority of Motihari to not to register sale deed/ transfer deed in respect of Plot No. 255 of Khata NO. 2, Area 2.90 Decimal.

Brief Facts of the case

2. The brief facts of the case is that *kaimi* lands comprised in Plot No. 236, 241, 154 & 255 of Khata No.2, having area 9 Bigha, 14 katha, 6 dhur, 2 Bigha, 6 katha, 5 dhur, 2 bigha, 10 katha, 15 dhur and 14 katha, 16 dhurs, of lagan of Rs. 62 $\frac{3}{4}$, Mauza Gopalpur is recorded in the name of Abdul Ganni in the Records of Right. These lands and other lands were put on auction in an execution of a decree passed by the competent Civil Court. Abdul Ganni and Hazi Abdul Ganni are one and same person.

3. One Raja Ram, son of Babu Madho Prasad of Motihari district had purchased aforementioned *kaimi* lands in Court auction having total area 15 Bigha, 6 Katha and 2 Dhurs, comprised in Plot Nos.236, 241, 154 & 255 of Khata No.2, having area 9 Bigha, 14 katha, 6 dhur, 2 Bigha, 6 katha 5 dhur, 2 bigha 10 katha 15 dhur and 14 katha 16 dhurs, of lagan of Rs.



62 $\frac{3}{4}$ apart from other lands having area 6 Bigha 8 Katha 3 Dhurs. The court auction sale took place in Case no.125 of 1916 (Sayed Mohammad Hussain decree holder Vs. Hazi Abdul Ganni judgment debtor). A Sale Certificate under Order XXI Rule 94 C.P.C. was also issued to auction purchaser Raja Ram and delivery of possession over 15 Bigha 6 Katha 2 Dhur was delivered on 30.07.1916 through the process of the court.

Stand on behalf of the petitioners

4. It has been submitted by the learned counsel for the petitioners that the auction purchaser, namely, Purosotam Lal Agrawal, son of Late Raja Ram sold 2 katha 10 dhur of land, comprised in Khata No.2, Plot No.255, Mauza Gopalpur to Petitioner no.1 on 13.07.1982 through registered sale deed no. 13042 after receiving adequate and valid consideration. He thereafter, put the purchaser/Petitioner no.1 in actual physical peaceful possession. Petitioner no.1 thereafter got his name mutated in the Government *Sirista* and after payment of due rent got rent receipt issued in his favour in respect of his purchased land after creation of Jamabandi No.114. He is paying rent and in lieu thereof, getting rent receipts which are up- to-date.

5. Learned counsel for the petitioners has further submitted that petitioner no.1 got his name mutated on the basis



of the registered sale deed dated 13.07.1982 in the Nagar Parishad, Motihari, being Holding No.36 situated in Ward No.36 and paying holding tax. Petitioner no.1 has also obtained Land Possession Certificate on 29.08.2020 after due inspection and enquiry in respect of the aforesaid land, having area 14.50 decimal. Petitioner no.1 after purchasing the Indian Non-Judicial Stamps of value Rs.4000/- duly executed sale deed in favour of petitioner no.2 in respect of 2.90 decimal of land comprised in Khata No.2, Plot No.255, Mauza Gopalpur, out of his purchased land. It was duly presented for registration but the original sale deed stamps with recitals and execution have been returned to the petitioner no.1. On enquiry from registry office, it was informed that the Chief Secretary, Government of Bihar had issued a letter no.26 dated 07.04.2015 and thereby stopped sale of Plot No.255 of Khata No.2. The Chief Secretary, Government of Bihar, Patna had issued such letter on the basis of a letter given by Bihar State Shia Wakf Board but no such letter has been provided to the petitioners.

6. Learned counsel for the petitioners further submits that thereafter petitioner no.1 moved before the Chairman of Bihar State Shia Wakf Board stating aforesaid facts along with relevant documents in support of the facts stated in



the application but no action was taken by the Bihar State Shia Wakf Board informing the State Government, especially the Chief Secretary, Government of Bihar, Patna that the property of the petitioner does not belong to Bihar State Shia Wakf Board. He further submits that when a properly stamped and duly executed sale deed is presented before the Registering Authority, then it has to be registered under the provisions of Section 58 to 61 of the Registration Act, 1908. In this case, the Registering Authority refused to register without disclosing any reason as to why he is returning the duly executed original sale deed. Thus, the Registering Authority acted arbitrarily in returning the duly executed original sale deed to Petitioner No. 1.

7. Learned counsel for the petitioners further submits that the Registering Authority instead of returning the duly executed original sale deed, should have refused to register the sale deed on the ground mentioned in Rule 19 of the Bihar Registration Rules, 2008. In fact the Registering Authority would have refused only when it would have found any of 15 circumstances mentioned in Rule 19 of the Bihar Registration Rules, 2008. None of the fifteen circumstances mentioned in Rule 19, Chapter IV of Bihar Registration Rules, exist in the present case so as to entitle the Registering Officer to refuse the



duly presented document/ sale deed. He further submits that the Registering Authority deliberately did not refuse to register because as per Rule 20 Chapter IV of Bihar Registration Rules, 2008, he had to clearly state the reasons of refusal in his own hand and also record the same in the computer on the same day. The refusal is to be recorded in Book No. II. Records of Refusal in Book No. II shall be in Form 5 in Appendix A. The Registering Officer shall after recording such refusal, immediately communicate the same to the presentant of the document either by post or by any other reliable means.

8. Learned counsel for the petitioners further submits that the Registering Officer is under legal obligation to endorse on every document presented before it for registration, the day, hour and place of presentation, the photographs and fingerprints affixed and the signature of every person presenting the document for registration, if the document is found in order in all respects for registration. In this case, the Registering Officer neither refused to register nor gave reasons for non registration rather chose to return the duly executed original sale deed, even though none of the circumstances mentioned in Rule 19 of the Bihar Registration Rules, 2008 was present which empowered refusal to register document presented for



registration. He further submits that as per Section 71 of the Registration Act, 1908, every Sub Registrar refusing to register a document, except on the ground that the property to which it relates is not situated within his sub district, shall make an order of refusal and record his reasons for such order in his Book No. II and endorse the words 'registration refused' on the document and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

9. It has further been submitted by the learned counsel for the petitioners that the Registering Authority / did not record reasons for refusal as per S.71 of Registration Act r/w Rules 19 & 20 of Bihar Registration rules, 2008 because none of the legal grounds of refusal to register the duly executed original sale deed as envisaged under the aforesaid provision, available to the Registering Officer in respect of sale deed in question which was duly presented for its registration. Therefore, the Registering Officer, deliberately 'returned' duly executed original sale deed instead of refusing to register it and follow the procedure. Hence, he acted arbitrarily, whimsically, capriciously and unfairly, resulting in deprivation of statutory and legal right of the petitioners.



Stand taken by the Bihar State Shia Wakf Board

(Respondent No. 09)

10. Counter affidavit has been filed by the Shia Wakf Board (respondent no. 09).

11. Learned counsel for the respondent no. 09 has submitted that the property in question belongs to Bibi Mahmoodan Nisa Wakf estate no. 187/Motihari which was orally dedicated by the husband of Bibi Mahmoodan Nisa namely Shaikh Mohammad Ibrahim in the year 1920 in the name of Almighty for religious charitable and pious purposes as Wakf-Alal-Aulad. After death of her husband Bibi Mahmoodan Nisa had created a Wakfnama through a registered deed no.8614, book no. I, volume 81, page 273 to 278 registered on 08.11.1924.

12. Learned counsel for the respondent no. 09 has further submitted that on 16.10.1920 Shaikh Mohammad Ibrahim had purchased the land in question along with other landed properties in different Plot numbers appertaining to Khata no.2 and 53, Thana no. 169 situated at Gopalpur, Motihari and Khata no. 364, 64, Thana no.48, under Tauzi no.1310 situated at Parsauni and Raxaul through registered sale deed dated 16.10.1920 from the one Hiralal Sah Mahajan Motihari.



13. Shaikh Mohammad Ibrahim and his wife Bibi Mahmoodan Nisa were issueless and were benevolent persons who did orally dedicated the entire lands of Tauzi no. 1310, Khata no. 2,53,364,64 in several plots including Plot no. 255 in question Khata no.2, Thana no.169.

14. After pious dedication made by Shaikh Mohammad Ibrahim on 16.10.1920 his wife namely Bibi Mahmoodan Nisa brought it in writing which was registered on 08.11.1924 bearing Wakf deed no. 8614, book no. I, volume 81, page 273 to 278.11. The properties of Khata no. 2, Plot no.255, Thana no.169, Tauzi no.1310 situated at Gopalpur, Motihari which belongs to Bibi Mahmoodan Nisa Wakf estate and it had become Wakf property since the year 1920. Subsequently testified by the Wakf Deed (Wakfnama) dated 08.11.1924.

Stand taken by the petitioners on the counter affidavit of the Shia Wakf Board

15. Learned counsel for the petitioners by filing rejoinder affidavit has further submitted that one Raja Ram son of Babu Mohan Prasad of Motihari district had purchased in Court auction aforementioned kaimi lands having total area 15 Bigha. 6 Katha and 2 dhurs comprised in Plot Nos.236, 241, 154 & 255 of Khata Mo.2, area 9 Bigha,. 14 katha, 6 dhur, 2 Bigha, 6 katha 5 dhur, 2 10 katha 15 dhur and 14 katha 16 dhurs, of



lagan of Rs. 62 $\frac{3}{4}$ apart from other lands having area 6 Bigha 8 Katha 3 Dhurs, The auction sale took place in Case no. 125 of 1916 (Sayed Mohammad Hussain (decree holder) Vs. Hazi Abdul Ganni judgment (debtor).

16. A Sale Certificate under Order 21 Rule 94 CPC was also issued to auction purchaser. Raja Ram delivery of possession 15 Bigha 6 Katha 2 Dhur was delivered on 30-07.1916 (annexure-P/2) of plot No 236, 241, 154 & 255 of Khata No.2 through the process of the court. Respondent no.9 and his vendor did not challenge the order passed by Civil Court in case no. 125/2016 nor challenged the sale certificate passed under Order 21 Rule 94 of C.P.C.

17. Learned counsel for the petitioners further submits that respondent no.9 and his vendor never challenged order passed in case no. 125/2016 nor order passed under Order 21 Rule 94 of CPC, where as under Order XXI Rule 92 stipulate as, Sale when to become absolute or be set aside.--(1) Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute". Respondent no.9 came in existence as Bihar State Shia Wakf Board as an agency of Government of Bihar



constituted in year 1948.

18. Learned counsel for the petitioners further submits that son of the auction purchaser, namely, Purosotam Lal Agrawal, son of late Raja Ram sold 2 katha 10 dhur of land, comprised in khata no. 2. Plot No. 255 Mouza Gopalpur to petitioner no.1 on 13.07.1982 through registered sale deed no. 13042 after receiving adequate and valid consideration and put the purchaser/Petitioner no.1 in actual physical peaceful possession and Petitioner no. 1 got his name mutated in the Government Sirista and after payment of due rent and got rent receipt issued in his favour in respect to his purchased land after creation of Jamabandi No. 114. He is getting rent receipts which are up-to-date, respondent no.9 has also not challenged the said sale deed.

19. Learned counsel for the petitioners also denied the statement of the respondent no. 09 that Bibi Mohammad Nisha Wakf Estate was orally dedicated by the husband of Bibi Mohammad Nisha namely Seikh Md. Ibran in the year 2020, whereas land recorded in the name of Abdul Gani bearing Plot No. 236, 241, 154,255 of Khata No.2, Area-8 Bigha 14 Katha 6 Dhur, 2 Bigha 6 Katha 5 Dhur 2 Bigha 10 Katha 15 Dhur and 14 Katha 16 Dhur, the aforesaid land and other land were put on



auction and execution of the decree passed by competent civil court.

20. Learned counsel for the petitioners further submits that auction sale took place in Case No. 125 of 2016, Sayed Md. Hussain (Decree holder) Vs. Hazi Abdul Gani (Judgement debtor). A sale certificate under order 21 Rule 94 of C.P.C. was issue to the auction purchaser, Raja Ram delivered of the possession over 15 Bigha 6 Katha 2 Dhur land on 30.07.2016 through the process of the court, thus the statement that after death of husband Bibi Mohammad Nisha had created Wakfnama through a registered deed dated 08.11.2024 is false and concocted story and she had no right and titled to execute said land, when through process of the court, the said very land was auction sold and possession was delivered vide Auction Case No. 125 of 2016.

Consideration

21. I have considered the submissions of the parties. The land in question has been auctioned sold on 21.07.2016 and the land in question is in possession of the predecessors of the petitioner since 1916.

22. The Wakf Board has not produced the alleged sale deed dated 13.07.1982. If the Wakf Board disputes the title



of the petitioner then the Wakf Board should have filed a Title Suit and get the title declared on the Land in question.

23. The petitioner no. 1 is paying the rent to the State of Bihar and get his named mutated in the government records.

24. Moreover, in view of the law laid down by this Court in the case of **Bihar Deed Writers Association V/s State of Bihar; AIR 1989 Pat 144**, the Registering Authority cannot refuse to register the sale deed and it cannot go behind the title of the executant. It has to register the sale deed.

25. Mere objection of the Wakf Board will not stop the petitioner from transferring the land in question until and unless, there is an order by a competent court of law.

26. In view of the above discussions, this application is allowed and the Letter No. 28 dated 07.04.2015 of the Chief Secretary, Government of Bihar is hereby quashed.

27. The respondents are directed to register the sale deed presented for execution by the petitioners in favour of his predecessors.

28. The Wakf Board may approach the Bihar Wakf Tribunal for declaration of title over the land in question.

29. With the aforesaid observation and direction,



this application stands allowed.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	N.A.F.R.
Uploading Date	08.05.2024.
Transmission Date	NA

