

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.45 of 2013

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Kaushal Kumar Singh S/O Late Ambika Narain Singh R/O Village and P.O.-
Kunda, P.S.- Aurangabad Muffasil, District- Aurangabad, Hotel K.K.
International, Naujadik Complex, Old G.T. Road, Aurangabad - 824 101

... .. Defendant/Petitioner

Versus

1. Bihar State Sunni Wakf Board and Ors. Haz Bhawan, 34-Ali Imam Path,
Patna
2. Madarsa Islamia Wakf Estate, Aurangabad District- Aurangabad Through Its
Secretary
3. Syed Shams Warsi S/O Late Haji Nizamuddin Warsi Secretary, Madarsa
Islamia Wakf Estate, R/O Warsi Mansion, Mohalla- Paithan Toli, P.O.P.S.
And Town- Aurangabad, District- Aurangabad
...Plaintiffs/Opposite Parties- 1st set

4. Pradeep Kumar Singh S/O Late Janeshwar Prasad Singh R/O Mohalla- New
Area, At P.O. P.S.- Aurangabad, District- Aurangabad, At Present Hotel K.K.
International, Navjadik Complex, Old G.T. Road, Aurangabad - 824101
Bihar
5. Sanju Kumar Singh S/O Late Janeshwar Prasad Singh R/O Mohalla- New
Area, At P.O. P.S.- Aurangabad, District- Aurangabad, At Present Hotel K.K.
International, Navjadik Complex, Old G.T. Road, Aurangabad - 824101
Bihar
6. Ashok Kumar Singh S/O Late Ambika Narain Singh R/O Village- Kunda,
P.O.- Kunda, P.S.- Aurangabad Muffasil, District- Aurangabad
.. ..Defendants/Opposite Parties- 2nd set

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan Sr. Advocate Mr.Raj Kishore Prasad
For the O.P.N.1		Mr.Md. Helal Ahmad
For O.P. Nos. 2 & 3		Mr. Rashid Izhar Mr.Adil Abbss Mr. S.M.Danish Mansoor

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV JUDGMENT

Date : 12-03-2024

I have already heard the learned counsel for the
parties.



2. The present civil revision application has been preferred by the petitioner against the order dated 15.03.2013, passed by the learned Presiding Officer, the Bihar Wakf Tribunal, Patna, hereinafter to be referred to as 'the Tribunal', in Title Eviction Suit No. 37 of 2010, whereby the petition filed by the petitioner under Order VII, Rule-11(a) and (d) of the Code of Civil Procedure, hereinafter to be referred to as 'the Code', has been rejected.

3. The brief facts for appreciation of the revision application is that prior to the present suit, the plaintiff(s) filed Eviction Suit No. 07 of 1994 in the court of Munsif, Aurangabad for eviction of the petitioner/ the tenant, who was defendant in that suit. The petitioner, who was defendant in that suit, filed an application on 19.08.2002 with an averment that, as per Section 85 of the Wakf Act, 1995, hereinafter to be referred to as 'the Act', the civil court had no jurisdiction over the subject matter. After hearing both the parties, the learned Munsif, vide order dated 20.04.2007 in Eviction Case No. 07 of 1994, held that the civil court had no jurisdiction to decide the eviction case. The suit was dismissed on the ground of lack of jurisdiction.

4. Having no option, the plaintiffs/opposite



parties-1st set filed Eviction Suit No. 37 of 2010 before the Tribunal and the defendant/petitioner put forward the contrary submission that the Tribunal had no jurisdiction, but only the civil court had jurisdiction to decide the subject matter. Raising the question of jurisdiction, the defendant/petitioner filed an application under Order VII, Rule 11 (d) of the Code with a prayer to reject the plaint for want of jurisdiction. That application was rejected by the impugned order.

5. The learned counsel for the petitioner submitted that the present suit for eviction of the petitioner was filed in the year 2010. At that time, the Tribunal had no jurisdiction for eviction. The jurisdiction to try a suit for eviction of a tenant was vested with the Tribunal, after amending Section 83 of the Act. Section 83 of the Act was amended by Section 44 of amending Act No.27 of 2013 and the amending Act came into force on 01.11.2013. After 01.11.2013, Section 83(1) of the Act reads as follows:-

*“83. Constitution of Tribunals, etc.-[(1)
The State Government shall, by
notification in the Official Gazette,
constitute as many Tribunals as it may
think fit, for determination of any dispute,
question or other matter relating to a waqf
or waqf property, **eviction of a tenant or***



determination of rights and obligations of the lessor and lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals:]
{Emphasis on the bold portion added by me.}

6. Prior to the amendment, which came into operation on 01.11.2013, Section 83(1) reads as under:-

“(1) The State Government shall, by notification, in the Official Gazette, constitute as many Tribunals as it may think fit, for determination of any dispute, question or other matter relating to a waqf or waqf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.”

7. The learned counsel for the petitioner/tenant submitted that bare perusal of Section 83(1) of the Act shows that prior to 01.11.2013 the Tribunal had no jurisdiction to decide the eviction cases. Only after 01.11.2013, the Tribunal was conferred with the jurisdiction to decide the cases relating to eviction of a tenant or determination of rights and obligations of the lessor and the lessee of the waqf property. He submitted that, admittedly, the suit was filed before the Tribunal in the year 2010, and on the day of filing of the suit



the Tribunal had no jurisdiction to try the suit. The learned counsel further submitted that the Hon'ble Supreme Court in the case of ***Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf***, reported in ***2010 (4) BBCJ, page 208***, in unequivocal terms, has held that the Tribunal has no jurisdiction to try such eviction suit, and only the civil court has such jurisdiction.

8. The learned counsel for O.P. Nos. 4 to 6 submitted that the petitioner took the contrary position by submitting that the civil court has jurisdiction to decide the eviction case. Earlier, the opposite parties filed eviction suit before the civil court and in that suit the defendant/petitioner filed an application that the civil court had no jurisdiction. That application was allowed and the learned Munsif dismissed the suit of the plaintiff(s). Thereafter, the contesting opposite parties are running from pillar to post for 30 years for getting the relief

9. It is not in dispute that the opposite party approached the civil court, at the first instance, by way of Eviction Suit No. 07 of 1994, which was instituted in the court of Munsif, Aurangabad. On the application filed by the petitioner, the issue of preliminary jurisdiction was decided in that court and the learned Munsif, vide his order dated



20.04.2007, dismissed that suit, stating that the civil court had no jurisdiction to try the suit. Having no option, the plaintiffs/opposite parties- 1st set approached the Tribunal in the year 2010.

10. It is clear from the above-quoted provision of Section 83(1) of the Act that the jurisdiction to try the eviction cases was conferred upon the Tribunal after 01.11.2013.

11. It is not in dispute that, at present, the Tribunal has jurisdiction to try the suit for eviction, and it does not lack the jurisdictional error for the present.

12. From perusal of the impugned order and lower court records, it is clear that the point of jurisdiction was not raised by the petitioner/defendant at the earliest possible opportunity. He raised the jurisdiction only after the examination of the witnesses of the plaintiff(s).

13. It is not in dispute that presently only the Tribunal has jurisdiction to try eviction suit. As per the provision of Section 32 of the Bihar Buildings (Lease Rent & Eviction) Control Act, 1982, the eviction suit pertaining to waqf properties, cannot be filed under the said Act. The plaintiffs/opposite parties cannot be rendered remediless, neither they can be forced to run from pillar to the post.



14. On the basis of the above-noted observations,
this civil revision application is dismissed.

15. Let the LCR be returned back to the Tribunal
at once.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	15.01.2024
Uploading Date	15. 03.2024
Transmission Date	

