

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.73 of 2019

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Md. Ali S/o Late Ali Bux R/o Mohalla- Rambagh Kanhauli Bishnudutt, P.S.-
Mithanpura, P.O.- Ramna, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The Chief Executive Officer Bihar State Sunni Waqf Board, Haj Bhawan,
Harding Road, Patna
2. Md. Salauddin alias Md. Salahuddin, Son of Late Md. Shafi Resident of
Rambagh Chowk, P.S.- Mithanpura, District- Muzaffarpur.

... .. Opp. parties

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with
CIVIL REVISION No. 92 of 2019

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1. Abdus Salam Son of Late Md. Suleman Resident of Mohalla- Rambagh
Chauri, Ward No-6, Kanhauli Bishnudutt P.S.- Mithanpura, P.O.- Ramna,
District- Muzaffarpur.
2. Md. Amanullah @ Amanullah Son of Late Md. Kalam Resident of Mohalla-
Rambagh Chauri, Ward No-6, Kanhauli Bishnudutt P.S.- Mithanpura, P.O.-
Ramna, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Chief Executive Officer Bihar State Sunni Waqf Board, Haj Bhawan,
Hardinge Road, Patna.
2. Md. Salahuddin Son of Late Md. Shafi Resident of Rambagh Chawk, P.S.-
Mithanpura, District- Muzaffarpur, the Secretary of the Haji Khoda Bux
Waqf Estate, No-1190, Rambagh Muzaffarpur.
3. Md. Ali (N) son of late Ali Bux R/o Mohalla- Rambagh Kanhauli
Bishnudutt, P.S.- Mithanpura, District-Muzaffarpur

... .. Opp parties

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with
CIVIL REVISION No. 94 of 2019

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Amirul Islam Son of Late Md. Suleman R/o Mohalla-Rambagh Chauri, Ward
No.-6, Kanhauli Bishnudutt, P.S.-Mithanpura, P.O.-Ramna, District-
Muzaffarpur

... .. Petitioner/s

Versus

1. The Chief Executive Officer Bihar State Sunni Waqf Board, Haj Bhawan,
Harding Road, Patna
2. Md. Salahuddin S/o Late Md. Shafi R/o Rambagh Chawk, P.S.-Mithanpura,



District-Muzaffarpur, the Secretary of the Haji Khoda Bux Waqf Estate, No. 1190, Rambagh Muzaffarpur

- 3 Md. Ali (M) son of late Ali Bux R/o Mohalla- Rambagh P.S.- Mithanpura, District-Muzaffarpur

... .. Opp parties

with
CIVIL REVISION No. 98 of 2019

Md. Hasan Son of Late Md. Shakoor R/o Mohalla- Rambagh Kanhauli Bishnudutt, P.S.-Mithanpura, P.O. Ramna, District-Muzaffarpur

... .. Petitioner/s

Versus

1. The Chief Executive Officer Bihar State Sunni Waqf Board, Haj Bhawan, Harding Road, Patna
2. Md. Salahuddin S/o Late Md. Shafi R/o Rambagh Chawk, P.S.-Mithanpura, District-Muzaffarpur, the Secretary of the Haji Khoda Bux Waqf Estate, No. 1190, Rambagh, Muzaffarpur

... .. Opp parties

with
CIVIL REVISION No. 99 of 2019

Md. Ali Son of Late Ali Bux R/o Mohalla-Rambagh Kanhauli Bishnudutt, P.S.-Mithanpura, P.O. Ramna, District-Muzaffarpur

... .. Petitioner/s

Versus

1. The Chief Executive Officer Bihar State Sunni Waqf Board, Haj Bhawan, Harding Road, Patna
2. Md. Salahuddin S/o Late Md. Shafi R/o Rambagh Chawk, P.S.-Mithanpura, District-Muzaffarpur, the Secretary of the Haji Khoda Bux Waqf Estate No. 1190, Rambagh, Muzaffarpur

... .. Opp. parties

with
CIVIL REVISION No. 100 of 2019

Nurul Islam Son of late Late Md. Suleman Resident of Mohalla- Rambagh Kanhauli Bishnudutt, P.S.- Mithanpura, P.O- Ramna, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Chief Executive Officer, Bihar State Sunni Waqf Board, Haj Bhawan, Hardinge, Road, Patna.



- 2. Md. Salahuddin Son of Late Md. Shafi, Resident of Rambagh Chawk, P.S-Mithanpura, District- Muzaffarpur, the secretary of the Haji Khoda Bux Waqf Estate, No.- 1190, Rambagh Muzaffarpur.
- 3. Md. Ali (M) son of late Ali Bux R/o Mohalla- Rambagh Kanhauli P.S.- Mithanpura, District-Muzaffarpur

... .. Opp. parties

Appearance :

(In CIVIL REVISION No. 73 of 2019)

For the Petitioner/s : Mr. Md. Anis Akhtar, Advocate
For the Opp. parties : Mr. Md. Helal Ahmad, Advocate
Mr. Syed Firoz Reza, Advocate

(In CIVIL REVISION No. 92 of 2019)

For the Petitioner/s : Mr. Md. Anis Akhtar, Advocate
For the Opp. parties : Mr. Md. Anjum Akhter, Advocate
Mr. Syed Firoz Reza, Advocate

(In CIVIL REVISION No. 94 of 2019)

For the Petitioner/s : Mr. Md. Anis Akhtar, Advocate
For the Opp. parties : Mr. Md. Anjum Akhter, Advocate
Mr. Syed Firoz Reza, Advocate

(In CIVIL REVISION No. 98 of 2019)

For the Petitioner/s : Mr. Asif Kalim, Advocate
For the Opp. parties : Mr. Md. Helal Ahmad, Advocate
Mr. Syed Firoz Reza, Advocate

(In CIVIL REVISION No. 99 of 2019)

For the Petitioner/s : Mr. Md. Anis Akhtar, Advocate
For the Opp. parties : Mr. Md. Helal Ahmad, Advocate
Mr. Syed Firoz Reza, Advocate

(In CIVIL REVISION No. 100 of 2019)

For the Petitioner/s : Mr. Md. Anis Akhtar, Advocate
For the Opp. parties : Mr. Md. Helal Ahmad, Advocate
Mr. Syed Firoz Reza, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

12 05-08-2024 Heard learned counsel for the petitioners and learned
counsel for the opposite parties.



2. All these three Revisions Applications arise out of Eviction Applications which were allowed by the learned Chairman/Presiding Officer, the Bihar State Waqf Tribunal Patna, (for brevity 'the Tribunal') whereby petitioners have been declared as encroachers of the properties of Haji Khuda, Baksh Waqf Estate No. 1190.

3. Civil Revision Nos. 73 of 2019 has been filed by the petitioner against the order dated 02-04-2019 passed in Eviction Application No. 06 of 2016 whereby petitioner has been declared as encroachers of the properties of Haji Khuda Baksh, Waqf Estate No. 1190 over plot No. 2699.

4. So far Civil Revision Nos. 92 of 2019, 94 of 2019, 98 of 2019, 99 of 2019 and 100 of 2019 are concerned, they have been filed by different petitioners against the common order dated 05-04-2019 passed in Eviction Application No. 05 of 2017 whereby petitioners have been declared as encroachers of the properties of Haji Khuda Baksh, Waqf Estate No. 1190. Details of the encroached portion of the Waqf Estate has been given at the foot of the Eviction Application.

5. The case of the applicant/ Bihar State Sunni Waqf Board (for short 'the Board') is that one Haji Khuda Baksh executed a registered deed of Waqf dated 22-09-1933 for his



entire properties and had also constructed a mosque known as “Kanhauli Mosque” out of his personal income. It is further case of the Board that after creation of Waqf, Haji Khuda Baksh remains Mutwalli of the Waqf till his life time and after his death his wife, namely, Bibi Sobratan became Mutawalli. The said Bibi Sobratan, in collusion with her nephew, namely, Md Ali got mutated her name in revisional survey *khatiyani* with respect to the Waqf properties and for this act of mischief, Bibi Sobratan was removed by the Board. Thereafter, the Board authorized one Md. Siddique to take legal steps for removing the name of Bibi Sobratan from the revisional *khatiyani* and get the name of *Kanhauli Masjid* entered in her place. Bibi Sobratan filed Misc. Case No. 23 of 1970 against the said order under Section 27(3) of the Bihar Waqf Act in the Court of learned District Judge, Muzaffarpur, which was allowed in favour of Bibi Sobratan holding that Board did not produce any paper showing the execution and registration of Waqf deed by Haji Khuda Baksh. It is pertinent to mention here that against the order of Additional District Judge, Muzaffarpur, the Waqf Board filed appeal before this Court *vide* Misc. Appeal No. 272 of 1981, which was heard by the Division Bench of this Court. The Division Bench, after hearing the Misc. appeal, allowed the



same *vide* order dated 09-04-1986 and set aside the order passed by the Additional District Judge, Muzaffarpur, whereby, Division Bench of this Court observed that the Waqf is created by Khuda Baksh and her wife Bibi Sobratan, who assailed the existence of Waqf, admitted that her husband Khuda Baksh (Waqif) was always engaged in pious and charitable service of Waqf connected with Masjid, and earning from the orchard was being used for the maintenance of Masjid. Bibi Sobratan also admitted that her husband, upon his death, asked her to look after the affairs of Waqf and Masjid. The said Bibi Sobratan died while the case was pending in the court below and her nephew Md. Ali was substituted in her place. The Division Bench further rejected the claim of O.P., namely, Md. Ali, nephew of Bibi Sobratan that he was adopted as a son by Bibi Sobratan and the same could not be accepted, as the Mohammedan law does not recognize adoption as mode of filiation. Against the said order, the nephew of Bibi Sobratan, namely, Md. Ali moved before the Hon'ble Supreme Court in S.L.P. No. 8161 of 1986 which was dismissed *vide* order dated 27-08-1987, and as such, all the properties claimed by Bibi Sobratan wife of Haji Khuda Baksh (Waqif) and her nephew Md. Ali as their personal property were decided and held as



Waqf properties bearing Waqf Estate No. 1190. Further case of the Board is that the Haji Khuda Baksh Estate was created in the year 1933 and the property mentioned in Waqfnama as “*Nami and Benami*” are under the exclusive possession of the Management Committee constituted time to time by the Waqf Board and the same are recorded in the Revenue records as “Kanhauli Masjid” and rent receipts were granted in the name of “Kanhauli Masjid” Haji Khuda Baksh Estate No. 1190, Muzaffarpur. The present Managing Committee, which has been constituted by the Waqf Board for looking after the affairs of the Waqf Estate, has filed two separate complaint petition before the Board against some of the persons, who unauthorizedly occupied the Waqf properties illegally and some of the tenants were not paying the rent and had encroached the Waqf property. The Waqf Board, considering the complaint petition dated 03-02-2016 called for a report from the District Minority Welfare Officer, Muzaffarpur, who submitted report *vide* letter No. 111 dated 31-03-2016, stating about the encroachment made by the petitioners and others over the Waqf property. Considering the complaint as well as report of the District Minority Welfare Officer, Muzaffarpur, the Waqf Board initiated an encroachment proceeding under Section 54 of the Waqf Act



(for short 'the Act') against the named encroachers and also issued notices to all the petitioners vide letter Nos.851-858 on 13-05-2016, asking them to file their explanation within 15 days. Petitioner, namely, Md. Ali filed his objection on 21-06-2016. Md. Hasan and Md. Akbar separately filed their show cause on 21-06-2016 stating therein, that plot No. 2789, area 7 decimals is recorded as *Deosthan Sarbsadharan* and the same is not in his possession. They asserted in their reply that one Bibi Sobratan gave five dhurs land to their father for rehabilitation and they are residing after constructing the hut. Besides this, Md. Hasan and Md. Akbar have jointly denied their possession over the land by filing petition dated 19-07-2016. Joint reply on behalf of Abdus Salam, Amirul Islam, Noorul Islam and Amanullah had also been filed. After considering the complaint petition and report as well as the reply filed by the petitioners, the Waqf Board passed an order dated 06-02-2017 against the OP and further declared that Opposite parties / petitioners are not the tenants of the Waqf Estate rather they occupied the Waqf premises, as encroachers of property of Haji Khuda Buksh Kanhauli Masjid of Waqf Estate No. 1190. The Waqf Board filed Eviction Application No. 05 of 2017 under requisite form and documents before the



Tribunal.

6. On notice, opposite parties/ petitioners appeared in Eviction Application No. 05 of 2017 and filed their written statement/objection to the Eviction Application.

7. The learned Tribunal, after scrutinizing the materials on record, has held that through the registered deed of Waqf dated 22-09-1933 the Waqif dedicated and constructed a mosque and also dedicated his property which were “Nami and Benami” owned and purchased by him appertaining to Khata nos. 415, 441, Plot nos. 2460, 1882, Khata No. 518 Plot No. 2408, Khata No. 420 Plot No. 1606, Khata No. 550 Plot No. 2405, Khata No. 477 Plot No. 1878, Khata No. 504, Plot No. 2460, Khata No. 442 Plot No. 2466, Khata No. 517 Plot No. 2403, Khata No. 423 Plot No. 1883, Khata No. 478 Plot no. 1887, Khata No. 451 Plot No. 1844, Khata No. 951 Plot No. 4832, Khata No. 421, Plot No. 1840 and also dedicated his properties, which were *Benami*. The contention of opposite parties is that the land of Khata Nos. 960, Plot Nos. 2788, 2801, 2774, 2784 and 2790 are not the Waqf property of Waqf Estate No. 1190. Further, the learned Tribunal recorded in his order that from the perusal of Register-26, it would appear that all the properties detailed in the Schedule of the Eviction application, were legally acquired



and purchased by the Waqif and he dedicated all his properties in Waqf to the mosque of Kanhauli. It is apparent from the letter issued by CEO, Bihar State Sunni Waqf Board, bearing letter No. 245 dated 03-02-2016, addressed to District Minority Welfare Officer, Muzaffarpur that he was asked to enquire on the application of Secretary, Waqf Estate No. 1190, Rambagh, Muzaffarpur. The District Minority Welfare Officer, Muzaffarpur, enquired the matter and by his report dated 31-03-2016 to CEO, Bihar State Sunni Waqf Board, reported that all the Opposite parties were contacted personally, who told him that they are not paying rent and assured to pay the rent in future. The CEO of the Board issued notices to all the opposite parties/petitioners to give their explanation. The learned Tribunal also considered the order dated 09-04-1986, passed by the Division Bench of this Court in M.A. No. 272 of 1981. The order was passed in favour of the Board and decided against the opposite party/ petitioner, namely, Md. Ali (Civil Revision No. 99 of 2019). The same was challenged by the petitioner, namely, Md. Ali before the Hon'ble Supreme Court in S.L.P. No. 8161 of 1986 and the order passed in the said Misc. Appeal was affirmed by the Hon'ble Supreme Court and the Special Leave Petition filed by the petitioner (Md Ali) was



dismissed. Government rent receipt issued by State Authority shows that properties stand in the name of Waqf Estate No. 1190. From perusal of the order of Board and its record, it is apparent that the Board, after affording sufficient opportunity of being heard to the opposite party, passed the impugned order dated 05-04-2019 in Eviction Application No. 05 of 2017 and declared the petitioners encroachers. Further, the learned Tribunal has held that there is no illegality or irregularity in the impugned order passed by the Board and, therefore, the opposite parties/petitioners have rightly been held as encroachers of the property of Waqf Estate No. 1190.

8. Eviction Application No. 06 of 2016, has been filed by the Chief Executive Officer of the Board against Md Ali for removal of encroachment against O.P. Md. Ali from the land detailed in Schedule of the Eviction Application.

9. The Opposite Party has reiterated the claim of the Waqf Board with regard to Waqf Estate No. 1190. It is contended that RS Plot No. 2699 of Waqf Estate No. 1190 is also recorded in *Anchal Jamabandi* Register in the name of Haji Khuda Baksh Waqf Estate bearing *Jamabandi* No.4363 and rent of the land was being paid by the present Secretary of Waqf Estate to the Government. It is further pleaded that applicant, duly followed



the process of law and after affording fair opportunity to the petitioner, issued notice to him under Section 54 of the Act. Upon notice, opposite party/ petitioner filed his objection/reply and pleaded that plot over which notice is sent to him is not a Waqf property as the same was not found in the Waqfnama nor the same was ever claimed by the Waqf Estate in earlier two litigations like Title Suit No. 1365 of 1973 and Execution Case No. 41 of 1970 and denied the title of the Waqf Estate. It is also pleaded that the Chief Executive Officer, without making any spot verification, examining the revenue records as well as records of the Board like Register-26 of the Board, declared the petitioner as encroacher over the disputed plot No. 2699 (old 1849 under R.S. Khata No. 960, area 1.65 decimals) by its order dated 22-10-2014.

10. The Chief Executive Officer of the Board filed Eviction Application No. 06 of 2016 in compliance of order passed under Section 54(3) of the Act for grant of order of eviction removing encroachment and delivering the possession of the land to the Mutawalli and/or Secretary of the Managing Committee. On notice, opposite party/ petitioner appeared and filed his written statement/objection.

11. The learned Tribunal considering the facts and



circumstances and averments of the parties as well as materials on records, held that the claim of the opposite party/petitioner Md. Ali that he was adopted son of Bibi Sobratan (widow of Waqif) cannot be accepted as Mohammedan law does not recognize adoption as mode of filiation. The decision of the Division Bench of this Court is against the petitioner, who also filed Special Leave petition before the Hon'ble Supreme Court which too was dismissed. The decision of the Division Bench passed in Misc. Application No. 272 of 1981 has attained finality and further held that from perusal of the Registration Certificate and Register 26, it is evident that the land in question is registered as Waqf property as well as *Lichhi* orchard of Waqf Estate No. 1190, is also part of the Waqf property. The contention of the opposite party/ petitioner that the plot No. 2699 is not mentioned in the Waqf is not tenable. The Annexure-5 series, which are the rent receipts, shows that it is being issued as part of Waqf Estate No. 1190. The Chief Executive Officer of the Board, after adopting all the process prescribed under the Act and after hearing the parties, declared the petitioner as encroacher of the Waqf Estate No. 1190. Learned Tribunal has not found any illegality or irregularity in the impugned order. The Tribunal has further held the petitioner to



be encroacher of the Waqf Estate over Plot No. 2699 and directed the petitioner to hand over the possession of the encroached area to the Mutawalli /Board, failing which he is liable to pay damages to the Waqf Estate.

12. Petitioner, namely, Md. Ali (Civil Revision No. 99 of 2019) has encroached/occupied two areas/ plots of the properties of Waqf Estate and, therefore, the Eviction order was passed in Eviction Application Nos. 06 of 2016 and 05 of 2017 separately.

13. The learned counsel for the petitioner has firstly augured the case of Md. Ali (petitioner in Civil Revision No. 99 of 2019), wherein, he raised mainly two objections, namely, the property in question is not a Waqf Estate property. Secondly, the procedure applied under Section 54 of the Act by the Board, is unjustified. It is contended that the notice was issued for removal of encroachment over plot No. 2788 and the Tribunal passed order against the petitioner as encroacher over the plot no. 2788 relying upon the judgment of the Division Bench of this Court passed in Misc. Appeal No. 272 of 1981 and the same has no bearing over the dispute regarding title, and there is no finding with regard to Plot No. 2788 of the learned Tribunal. The learned counsel for the petitioner further submitted that the



Board along with the Secretary of the Waqf Estate has filed Title Suit No. 02 of 2018 before the Tribunal for declaration that the suit land are the Waqf property and cannot be a subject matter of partition including the land in question, which is pending for final adjudication.

14. On the other hand, learned counsel for the Waqf Board has filed a detailed counter affidavit along with relevant documents in connection with the Eviction Applications. It is contended that the Board, in compliance of Section 54 of the Act, issued notice to the petitioners as well as petitioner of Civil Revision No. 99 of 2019 and the said Md. Ali (petitioner in Civil Revision No. 99 of 2019) had appeared and participated in the proceedings. It is also contented that during course of hearing, it was brought to the notice regarding typographical error in mentioning the plot, which was corrected on the basis of correction petition. It is vehemently submitted that property in question is a Waqf property and is registered in the office of the Board. The details of the property which was dedicated by the Waqif is with regard to his *Nami* and *Benami* property. The said waqf deed has not been challenged by any of the parties. So far Title Suit No. 02 of 2018, which has been filed by the Board and Secretary of the Waqf Estate before the Tribunal against some



other persons who had partitioned the said Waqf land in which although petitioner has filed petition for impleading him as a party, but as a matter of a fact, he is not connected with any one in the said proceeding. The land in question was also entered in the revenue records in favour of the Waqf Estate. The claim of the encroacher, namely, Md. Ali, has already been settled by a Division Bench of this Court, which had categorically held that Md. Ali has no right, title and interest over the said property as he was claiming the property of Bibi Sobratan (widow of Waqif) which was deceitfully recorded against his name on the basis of being an adopted son of Bibi Sobratan. The said claim has been denied by the Division Bench of this Court which was affirmed by the Hon'ble Supreme Court *vide* SLP No. 8161 of 1986. The property in question of Khata No. 960, Plot Nos. 2788, 2801, 2774, 2784 and 2790 are recorded in the name of Bibi Sobratan (wife of Waqif) on the basis that it was originally the property owned by Khuda Baksh (Waqif). This property is also a Waqf property as the Waqfnama itself explained the fact that his *Nami and Benami* property was dedicated by Khuda Baksh as Waqif and filed registration certificate of Waqf Estate No. 1190.

15. The learned counsel for the Opposite Party no.2, who is the Secretary of Haji Khuda Baksh Estate No. 1190, filed his



counter affidavit stating therein that the property in question is Waqf property, which has been duly registered in the office of the Board and Registration Certificate has also been issued by the Board in which the property in question is also mentioned as Waqf property.

16. On analyzing the impugned orders passed in all the revisions applications and materials on record, it is apparent that the Eviction Application has been filed as per the provisions prescribed under Section 54 of the Act. The petitioners/opposite parties have not filed any chit of paper in support of their possession as tenants of the Waqf Estate. Moreover, the claim of the petitioner in Civil Revision Nos. 99 of 2019 and 73 of 2019 as possessory right over the land in question on the basis of being successor in interest of Bibi Sobratan (widow of waqif) has been denied by the Division Bench of this Court which was affirmed by the Hon'ble Supreme Court. So far Title Suit No. 02 of 2018 is concerned, it is filed by the Board and Secretary of Haji Khuda Baksh Estate No. 1190 challenging the judgment and decree dated 22/23-03-2017 passed in Partition Suit No. 1204 of 2014 by the learned Sub Judge-XVI, Muzaffarpur whereby the Waqf property has been partitioned between the parties in Title Suit No. 1204 of 2014. The said property was



entered into the Government record in the name of Khuda Baksh Waqf Estate “Kanhauri Masjid” and rent receipts were also granted on payment of rent. It is apparent that the present Waqf Estate was created and registered in the year 1933 and its property has also been entered in the office of Waqf Estate. Therefore, once a Waqf is created, the heirs of Waqif could not claim as successor in interest and partition the said Waqf Estate’s property. The Waqf Board and Secretary of Waqf Estate has rightly challenged the decree of the Civil Court passed on 22-03-2017, which is barred under section 85 of the Act.

17. The petitioner in Civil Revision No. 92 of 2019 claimed his right over the land in-question on the basis of settlement in favour of their ancestor by the Waqif (Mutawalli herself) and the same is recorded in the name of *Gaushala* over which they are residing since long and challenging the manner in which the Waqf property is registered in the office of the Waqf Board. No document of title in support of his ownership has been filed either before the Waqf Board or before the Tribunal and vehemently claimed that the said property is not a Waqf property.

18. The claim of petitioner of Civil Revision No. 94 of 2019 is that the land in-question which is claimed to be Waqf



property, is orally settled in favour of his ancestor by the Waqif himself and since then he is residing over the same, without any legal document of his possession. The property in-question is registered in the office of the Waqf Board and also mentioned in the *khatiyān* and it was entered into the Revisional Survey *khatiyān* through '*Sudhi Patra*' (correction slip) after decision of this Court in Misc. Appeal No. 272 of 1981, which was affirmed in the S.L.P. by the Hon'ble Apex Court.

19. So far petitioner in Civil Revision No. 98 of 2019 is concerned, his claim over the plot in question is that the same is not a Waqf property rather the same is in the name of Md. Hanif and Sikmidar under Sikmi Khata No.101. The specific case of the petitioner is that plot No. 2784 is in possession of the petitioner. It is further stated that neither the petitioner was noticed nor any proceeding under Section 54 of the Act was initiated though the proceeding was started over plot No. 2790. The land of Khata No. 960 appertaining to Plot Nos. 2788, 2801, 2774, 2784 and 2790 is owned and possessed by the Waqif Khuda Baksh. The entire property of Khuda Baksh is bequeathed by him as Waqf in the year 1933 and the name of the Waqf Estate was recorded in the revenue records in the year 1997 through *sudhi partra*. The petitioner has not filed any



document of his title and possession.

20. The case of the petitioner in C.R. No. 100 of 2019 is that he claimed his possession as tenant of Md. Ali who got the plot, as per succession according to him. The Waqf Board issued notice. The said Md. Ali is a legal heir (nephew of Mostt. Bibi Sobratan, widow of waqif) and denied the title of the Waqf Estate over plot no. 2789. The petitioner claimed his possession as tenant through Md. Ali, who claimed to be adopted son of Bibi Sobratan and Haji Khuda Baksh (waqif). However, the Division Bench of this Court had decided the right, title and interest against Md. Ali in Miscellaneous Appeal No. 272 of 1981, which was affirmed by the Hon'ble Apex Court. The claim of the petitioner is based on the claim of Md. Ali who, according to him, is successor in interest from Bibi Sobratan that he was adopted as a son by Bibi Sobratan, which is not acceptable under Mohammedan law as Mohammedan Law doesn't recognize adoption as a mode of filiation. The claim of the petitioner is without any basis and authority of law.

21. The Waqf Act, 1995 came into force with effect from 01.01.1996. The very purpose of the Act is to provide for better administration and supervision of Waqfs as stated in the preamble to the Act. The said Act was amended in 2013 by the



Waqf (Amendment) Act, 2013. The principal Act, as it was passed, did not contain the definition for the term 'encroachment' or 'encroacher'. In absence of the definition of the term, assistance was being drawn from the general terminology to mean person in occupation of the Waqf property without sanction of law. In other words, the possession of the person, initially, was illegal and unlawful or that his position was that of a trespasser. Therefore, Section 3 of the Act was required to be strengthened to deal effectively with the issue of encroachment or unauthorized occupation of Waqf property. The Waqf (Amendment) Act, 2013 has defined the term 'encroacher'. The 'Clause (ee)' of Section 3 is inserted which defines an 'encroacher' as follows:

“3(ee) 'encroacher' means any person or institution, public or private, occupying Waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli of the Board”;”

22. Now, with this amendment, a person who comes to occupy a property, which is Waqf property either in whole or in part, without the authority of law, is termed as an encroacher. In other words, at the very inception or entry or expiry of lease/tenancy of the property, the occupation or possession of a



person is illegal and unlawful.

23. On plain reading of the definition of encroachment indicates that even a lessee of Waqf property after expiry of the lease is an encroacher and can be tried summarily under the procedure laid down in Section 54 of the Act and evicted either under sub-section (5) of Section 54 or Section 55 of the Act. Section 7 of the Act states that the Tribunal shall have the powers of assessment of damage by unauthorized occupation of Waqf property and to penalize such unauthorized occupants for their illegal occupation of the Waqf property and to recover the damages as arrears of land revenue through the Collector. However, by the Waqf (Amendment) Act 2013 as envisaged under sub clause 3 of Section 54 of the Act, the Board has power to refer the matter, after finding an encroachment on any portion or whole of the Waqf property, through application to the Tribunal for grant of order of eviction for removal. On receipt of such application from the Chief Executive Officer, the Tribunal has to pass a reasoned order. A reading of the provisions of Section 54 makes it clear that the power conferred upon the Chief Executive Officer is conspicuous and distinct on satisfaction that the property is a Waqf property and there has been encroachment on the same, the Chief Executive Officer



has to make an application to Waqf Tribunal for grant of an order of eviction. The Tribunal, after satisfaction, has to pass the order of eviction, but after giving an opportunity of being heard to the encroacher.

24. In view of the preceding analysis, the property in question is a Waqf property and has been duly registered in the office of Waqf Board. The Waqf Board, after due enquiry and after hearing the petitioners, has held that opposite parties/ petitioners are in possession of Waqf land without any authority of law, and as such, they are encroachers. On receipt of the applications filed by the Board being eviction application, the learned Waqf Tribunal, after hearing the parties, passed the impugned order and held that the petitioners are encroachers. The petitioners' possession are unauthorized without the authority of law. The Waqf Board has rightly initiated proceeding under Section 54 of the Act and passed an order under Section 54(3) of the Act.

25. In view of the finding of the Tribunal that property is a Waqf property and the petitioners are squatting over the same illegally and they have been ordered for evicting the same, this Court is not persuaded to hold that the judgment and order passed by the learned Waqf Tribunal for eviction for removing



encroachment is not in accordance with law.

26. All Civil Revision Applications are, accordingly,
dismissed.

(Khatim Reza, J)

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