

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13617 of 2023

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1. Braj Ballav Prasad Son of Late Shyam Lal Singh, Resident of ward no.6, Govindpur Kurtha, Fatuha, P.S.- Fatuha, District- Patna at present resident of Mohalla- Khanpur, P.O.- Makrauta, P.S.- Karaiparsurai, District-Nalanda.
 2. Raj Kishore Mehta @ Raj Kumar Mehta, Son of Ram Pratap Lal, Resident of Ward No.6, Govindpur Kurtha, Fatuha, P.S.- Fatuha, District- Patna.
 3. Ram Lal Sao, Son of Ram Kishun Sao, Resident of Ward No.6, Govindpur Kurtha, Fatuha, P.S.- Fatuha, District- Patna.
 4. Malti Devi wife of Jagdish Sharma, Resident of Ward No.6, Govindpur Kurtha, Fatuha, P.S.-Fatuha, District- Patna.
 5. Sanjay Prasad, son of Late Shyam Lal Singh, Resident of ward no.6, Govindpur Kurtha, Fatuha, P.S.- Fatuha, District- Patna, at present resident of Mohalla- Khanpur, P.O.- Makrauta, P.S.- Karaiparsurai, District- Nalanda.
 6. Sudeep Kumar, son of Braj Ballav Prasad, Resident of ward no.6, Govindpur Kurtha, Fatuha, P.S.- Fatuha, District- Patna, at present resident of Mohalla- Khanpur, P.O.- Makrauta, P.S.- Karaiparsurai, District- Nalanda.
 7. Surendra Vishwakarma son of Tota Mistri, Resident of Ward No.6, Govindpur Kurtha, Fatuha, P.S.- Fatuha, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Additional Collector, Revenue, Patna.
5. The Deputy Collector, Land Reforms, Patna City, Patna.
6. The Circle Officer, Fatuha, District- Patna.
7. The Bihar State Sunni Waqf Board, Patna through its Chief Executive Officer, Patna.
8. The Chief Executive Officer, Bihar State Sunni Waqf Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Bibhakar Tiwary, Advocate.
For the State	:	Mr. Asif Kalim, AC to AAG-12.
For the Waqf Board	:	Mr. Helal Ahmad, Advocate.



CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-04-2024

Heard Mr. Bibhakar Tiwary, learned counsel appearing on behalf of the petitioner; Mr. Asif Kalim, learned AC to AAG-12 for the State and Mr. Helal Ahmad, learned counsel for the Waqf Board.

2. In compliance of the order dated 03.01.2024, a counter affidavit has been filed by the respondent nos. 3 to 6 duly sworn by the Circle Officer, Fatuha. The Circle Officer, Fatuha after examining the revenue records relating to cadastral survey in the area, no revisional survey has been conducted ever. The details of the land has been mentioned in the report contained in the Letter No. 121 dated 18.01.2024. The land appertaining to Khata No. 130, Khesra No. 217 measuring 21 decimal is recorded in the name of Tinkauri Lal, Son of Moti Lal, caste – *koeri*, resident of Deh. In the column of remarks, it has been mentioned that on the same piece of land, 10 toddy trees were found at the time of cadastral survey, out of which, 6 trees belong to *khatiyani raiyat* and 4 were of Dargah. The other details have also been described in the report dated 18.01.2024.

3. I find from the report that the land has been recorded in the name of Tinkauri Lal and the petitioner no.2 namely Raj Kishore Mehta @ Raj Kumar Mehta has claimed as



his legal heir, however, no genealogical table has been brought on record, but in Para-8, the petitioner has claimed himself to be the descendant of Tinkauri Lal.

4. Mr. Helal Ahmad, learned counsel has submitted that the Waqf Board has registered the piece of land and the land belongs to the Waqf Board and the petitioner has no right title over the said land after the same has been registered in accordance with the provision of Section 36 of Waqf Act, 1995.

5. This Court inquired from him as to whether any application was made by any *Mutawalli* to own the Dargah. Mr. Helal Ahmad submitted that name of the Mutawalli has been mentioned in the registration application, but the same don't give any description about the land, as claimed by the petitioner. This Court was of the opinion that even though considering the fact that the land belongs to the petitioner, as admittedly, the same has been recorded in the name of ancestor of petitioner no.2 in the cadastral survey khatian.

6. Chapter-II relates to survey of Aukaf. No document has been brought on record with respect to the preliminary survey conducted by the State Government. Even considering the fact that the land which has been disputed by the Waqf Board belongs to the State Government or considering the fact



that concerned *Mutawalli* has got it registered in the name of Dargah, that also don't convince this Court in absence of any preliminary survey as per the requirement of Section 4 and also in absence of any inspection report on record as per the provision of Section 36 of the Waqf Act, 1995, to have been ever presented before the Board before getting the property registered in the name of the *Mutawalli*.

7. Mr. Helal Ahmad has submitted that such disputed question of fact can only be decided by the Tribunal.

8. This Court is not convinced with the said argument as the basic requirement for registering the property as claimed by the petitioner has not been detailed in the application made by the *Mutawalli* concerned or the State Government after conducting preliminary survey in accordance with the provision of Section 4 for declaring the said property as 'Aukaf' and a Gazette notification published in that regard.

9. I find it proper that the disputed question of fact can only be decided by a competent civil court. The parties may avail appropriate remedy in accordance with law.

10. This Court, however, makes it clear that the petitioner cannot claim right title over the Dargah land, which has been notified by the State Government and also cannot have



right title over the four toddy trees which has been recorded in the records of right in respect of the land in dispute claimed by the petitioner.

11. The writ application, accordingly, stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	24.04.2024
Transmission Date	N.A.

