

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.24 of 2024

In
Civil Writ Jurisdiction Case No.18212 of 2023

=====

Md. Ali Ahmad S/o Late Md. Zaki Prop./Shopkeeper of Tyre Puncture/Pan shop, High Court Mazar Sharif Wakf, Estate No. 663, Patna, P.S.-Kotwali, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Patna.
2. The Sub Divisional Magistrate, Patna Sadar, Patna.
3. The Circle Officer, Patna Sadar, Patna.
4. The Chairman, Bihar State Sunni Wakf Board, HaiBhawan. Patna.
5. The Chief Executive Officer, Bihar State Sunni Wakf Board, Haj Bhawan, Harding Road, Patna.
6. The Mutawalli, High Court Mazar Sharif Wakf Estate No.663, Patna, P.S.-Kotwali, District-Patna.
7. The Officer Incharge, P.S.-Kotwali and District-Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shambhu Sharan Singh, Adv.
For the State	:	Mr. Subhash Prasad Singh (GA 3)
For the Opposite Party/s	:	Mr. Helal Ahmed, Adv.
For the O.P. No. 6	:	Mr. Rashid Raees, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

11 24-03-2025 This Civil Revision application has been filed against the order dated 09.11.2023 passed in Eviction Application No. 26 of 2019 by the learned Bihar State Waqf Tribunal, Patna whereby the petitioner has been declared as encroacher of the properties of Waqf Estate No. 663 High Court Majar Sharif, Patna over Plot Number of Khata No. 96 situated at Bailey Road, P.S.-Kotwali, Dist.-Patna.



2. The case of the applicant/Bihar State Sunni Waqf Board (in short the “Board”), is that, the Waqf Estate No. 663, namely, Hazrat Syed Shah Ghulam Safdar Peer Murad Rahmatulla Aleh commonly known as High Court Mazarsharif has been registered in the Office of the Waqf Board. An encroachment proceeding was initiated on the application of Managing Committee submitted on 23.04.2019 by the Secretary of the Waqf Estate before the Waqf Board for removal of encroachment of Waqf property as encroached by the petitioner. It is further contended that the Waqf Board after following the due process of law heard the Secretary of the Managing Committee of the Waqf Estate and also the petitioner. After considering the materials on record and submission of the parties, the Waqf Board has declared the petitioner as defaulter as he failed to pay the rent of occupied premises since April, 2015. Consequently, the petitioner was declared as encroacher of the Waqf property. It is further contended that the petitioner was declared encroacher by order dated 28.08.2019 and the said order has not been challenged by the petitioner. In-compliance of provision of Section 54(3) of the Waqf Act,



1995, the Chief Executive Officer, Bihar State Sunni Waqf Board filed Eviction Application No. 26 of 2019 before the Bihar State Waqf Tribunal, Patna.

3. The brief facts of the case, is that, the Secretary of the Managing Committee filed requisition/complaint for removal of unauthorized occupation of the petitioner from the land of Waqf Estate with definite measurement and boundaries on the ground that the petitioner, who was lessee of the Waqf Estate has not paid rent since December, 2011 and is running an unauthorized tyre vulcanization puncture shop over the property in question. It is further case of the applicant/opposite party that the opposite party/petitioner has obstructed the development work of Waqf Estate. Pursuant to the complaint, the Chief Executive Officer of the Waqf Board issued notice to the petitioner, who appeared and filed reply to show-cause on 08.08.2019 and pleaded that he is a bonafide tenant of Waqf Estate and denied the dues of rent since December, 2011 and asserted that he has paid rent up to March, 2015.

4. On notice, petitioner appeared in Eviction Application No. 26 of 2019 and filed his written



statement/objection to the Eviction Application.

5. The learned Tribunal after considering the submissions of the parties and materials on record has declared the petitioner as encroacher. Further, the learned Tribunal has held that there is no illegality or irregularity or any other reason to interfere in the order dated 28.08.2019 passed by the Chief Executive Officer, Bihar State Sunni Waqf Board.

6. Being aggrieved by the order dated 09.11.2023 passed in Eviction Application No. 26 of 2019, the petitioner filed the present Civil Revision application. It is specific case of the petitioner that he is the tenant of the Waqf Estate since 1990 and is running a puncture-vulcanization shop over the land in question. He had paid rent up to March, 2015. On payment of rent, rent receipts were also issued. He is ready to pay arrears of rent in order to regularize his tenancy. It is further contended that the petitioner is the permissible tenant and not the encroacher. He is still ready to pay the rent against his tenanted premises. It is further submitted that the arrears of rent of the year 2011-15 was received by the Rent Collector of the



Board in 2017 itself. Thereafter, the petitioner was always ready to pay the rent of the shop but the opposite party/Waqf Board refused to receive the rent.

7. On the other hand, learned counsel for the Bihar State Sunni Waqf Board as well as the Managing Committee of the Waqf Estate filed their counter affidavits separately. The learned counsel for the Waqf Board submitted that an encroachment proceeding was initiated in view of order dated 24.02.2011 passed in C.W.J.C. No. 3780 of 2006 and for implementation of said order passed in M.J.C. No. 4010 of 2011. The petitioner along with other encroachers had filed L.P.A. No. 46 of 2012 challenging the order dated 24.02.2011 passed in C.W.J.C. No. 3780 of 2006. The said LPA was disposed of by order dated 13.12.2014 with a direction to Managing Committee to approach before the Waqf Tribunal for removal of encroachment. In-compliance of order dated 13.12.2014 passed in LPA No. 46 of 2012, the Managing Committee submitted requisition before the Waqf Board for removal of the encroachment of the Waqf property as encroached by the petitioner. The Waqf Board after hearing the parties,



allowed the application and declared the petitioner as defaulter since 2015 and also declared him as encroacher.

8. Considering the pleadings of the parties and materials on record, it is admitted case of the parties that the petitioner was the tenant and was paying rent till the year 2011. It is apparent from the rent receipt that payment was made by the petitioner from November, 2011 to March, 2015 which was paid on 09.02.2017 which was received by the Officials of the Waqf Board. No payment has been made from April, 2015 till filing of the present Revision application. The Waqf Amendment Act, 2013 has defined the term 'encroacher'. The 'Clause (ee)' in Section 3 has been 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'”

9. 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.

10. On a plain reading of the definition of encroachment indicates that even a lessee of a Waqf property after expiry of the lease is an encroacher and can be tried summarily under the procedure laid down under Section 54 of the Act and evicted either under Sub-Section (5) of Section 54 or Section 55 of the Act. However, under Sub-Section 3 of Section 54 of the Waqf Act, the Board has power to refer the matter, after finding an encroachment of any portion or whole of the Waqf property, through application to the Tribunal for grant of order of eviction for removal. A bare reading of the provision of Section 54 makes it clear that the power conferred upon the Chief Executive Officer is conspicuous and distinct on the 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 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.



11. From perusal of the records, it appears that the petitioner was a tenant and he paid the rent till March, 2015. It is admitted case of the petitioner that he paid rent till March, 2015 and thereafter the Waqf authority refused to take monthly rent. There is no attempt to remit the rent through money order by the petitioner. Hence, the petitioner has unauthorized occupation of the premises in question. The petitioner's possession is unauthorized without the authority of law. The Waqf Board has rightly initiated the proceeding under Section 54 of the Act and passed an order under Section 54(3) of the Act.

12. In view of the findings of the Tribunal, the petitioner is held to be encroacher over the Waqf property and is liable to be evicted from the property in question and further direction was to vacate the said property within 45 days from the affixture of order. In the event of non-compliance of the order by the petitioner, the Chief Executive Officer shall get the property vacated in accordance with Section 55 of the Waqf Act, 1995. However, in-compliance of order of the Tribunal, the petitioner has been evicted on 04.09.2024.



13. This Court is of the view that the impugned order passed by the Waqf Tribunal is completely in accordance with law and the same doesn't require interference of this Court.

14. Accordingly, this Civil Revision application is dismissed.

15. The *status quo* order passed in this case *vide* order dated 05.09.2024 is hereby vacated.

(Khatim Reza, J)

prabhat/-

U			
---	--	--	--

