

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.482 of 2017

In
Civil Writ Jurisdiction Case No.7838 of 2015

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Qzair Ahmad Khan @ Ojair Ahmed Khan S/o Akhyar Hussain Khan, R/o Village - Paili, P.O. - Bhadeya, P.S. - Barachatti, District- Gaya, Presently residing at Mohalla - Aliganj, P.S. - Chandauti, District- Gaya.

... .. Petitioner/s

Versus

1. The Bihar State Sunni Waqf Board, through its Chief Executive Officer, Haj Bhawan, 34 Ali Imam Path, Patna.
2. The Chief Executive Officer, Bihar Sunni Waqf Board, Haj Bhawan, 34 Ali Imam Path, Patna.
3. Md. Arif Khan @ Khurram Khan S/o Late Abdul Jabbar Khan, Mutawalli Irshad Ali Khan Waqf Estate No. 99, Gaya, R/o Village - Karma, P.S. - Barachatti, District- Gaya.
4. Anup Gupta S/o Late Sonu Lal, Shop No. 17 (in the name and Styled as Sonu Lal and Sons), Plaza Market, G.B. Road, P.S. - Civil Line, District- Gaya, R/o 3 Makhlantganj, P.S. - Kotwali, District- Gaya.
5. Md. Mansoor Alam S/o Late Md. Siddique Ansari, Shop No. 15 (in the name and styled as M.S. Electronics) Plaza Market G.B. Road, P.S. - Civil Line, District- Gaya, R/o Mohalla - Old Karimganj, Gali No. 3, P.S. - Civil Line, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar, Senior Advocate Mr. Arshad Alam, Advocate Ms. Anjum Parveen, Advocate Mr. Utsav, Advocate Mr. Kamran Fazal, Advocate
For the Resp. nos 1 & 2	:	Mr. Md. Helal Ahmad, Advocate
For the Resp. No. 3	:	Mr. Sajid Salim Khan, Sr. Advocate Mr. Arif Daula Siddiqui, Advocate Mr. Naumaan Ahmad, Advocate
For the Resp. nos. 4 & 5	:	Mr. Syed Asgher Najmi, Advocate Ms. Kainat Akhtar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 26-06-2025

Heard Mr. Santosh Kumar, learned Senior counsel
duly assisted by Mr. Arshad Alam for the petitioner, Mr. Sajid
Salim Khan, learned Senior Counsel for the respondent no.3,



Mr. Helal Ahmad representing respondent nos. 1 and 2 and Mr. Syed Asgher Najmi representing the respondent nos. 4 and 5.

2. The civil review petition no. 482 of 2017 has been preferred for the following relief(s):

“to review the order dated 06.10.2017 passed in CWJC No. 7838 of 2015 by Hon’ble Mr. Justice Ahsanuddin Amanullah (as his lordship then was) by which the writ application filed by this petitioner have been dismissed and the prayer made by the petitioner to quash the order dated 13.03.2015 passed by the State Waqf Tribunal in Title Suit No. 10/14 was rejected.”

3. The details of the property in question is/are as follows:

“Plaza Market (Irshan Manzil) measuring 13 kathas, Holding No. 39, Ward No. 5 situated at Mohalla G.B. Road (Kutchehary Road), Gaya, bounded as follows:

North-House of Chamari Sahu.

South-Parti land and after that Theosophical Society premises, Dargah of Hazrat Qutub Shaheed.

East-Municipal Drain and Road.



*West-Orchard attached to the house of Amir
Hasan Mukhtar.*

(1). Shop no. 17, Block-A.

North -Shop No. 15

South- Shop of Fakhre Alam 9Watch Centre)

East- G.B. Road

West- Back Side of Sangam Electronics.

(2). Shop No. 15, Block-A.

North- Passage of Plaza Marked

South- Shop No. 17 Sonu Lal & Sons

East- Shop No. 16

West- Shop No. 14”

4. Anup Kumar Gupta (respondent no. 4) and Md. Mansoor Alam (respondent no. 5) claiming themselves to be tenants of the said **Plaza Market preferred Title Suit No. 10 of 2014 (Anup Kumar Gupta and Anr. vs Bihar State Sunni Waqf Board and other)** before the **Bihar State Waqf Tribunal, Patna** (hereinafter referred to as ‘**the Tribunal**’) against the review petitioner (defendant no. 4 amongst other) claiming that though the aforesaid land belongs to **Waqf State**, they are their tenants but surprisingly, Qjair Ahmad Khan (review petitioner) raising frivolous claim over the property



wanted them to vacate the premises. In the said Suit, the Waqf Board was also impleaded as a party. An objection was raised by the review petitioner before ‘the Tribunal’ citing **Section-89 of the Waqf Act, 1995** (henceforth for short ‘**the Act**’) stating that the suit has been filed without mandatory notice to the Waqf Board and as such, it is fit to be dismissed.

5. **Section 89** of ‘the Act’ read as follows:

‘No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.’”

6. The case of the review petitioner is/was that since no notice was issued to ‘the Board’ before filing the suit, the same is not maintainable. ‘The Tribunal’ took up the matter on **13.03.2015** and rejecting the preliminary objection of the review



petitioner held that since the Waqf Board despite being impleaded as defendant is not agitating the non-service of notice, it cannot be fatal to the case. It held that the third party objection is fit to be dismissed (Annexure-3 to the writ petition).

7. Aggrieved, the review petitioner preferred **CWJC No. 7838 of 2015 (Qzair Ahmad Khan @ Ojair Ahmad Khan vs The Bihar State Sunni Waqf Board and Anr.)**.

8. During the pendency of the first writ petition, two more writ petitions came to be filed by the petitioner; one **CWJC No. 10579 of 2017** for setting aside the order dated **15.02.2017** passed by 'the Tribunal' in **Title Suit No. 10 of 2014** by which direction to maintain status quo was passed and the other, **CWJC No. 12357 of 2017** for setting aside the order dated **30.06.2017** passed by 'the Tribunal' to maintain status quo in **Title Suit No. 07 of 2016** filed by 'the Board'.

9. It is to be noted that during the pendency of the first writ petition, 'the Board' came forward and also preferred **Title Suit No. 07 of 2016** before 'the Tribunal' with regard to the same Suit property in which status quo order was passed as stated above leading to the third writ petition.

10. The batch cases were taken up by a Bench of this Court [Hon'ble Mr. Justice Ahsanuddin Amanullah (as his



lordship then was)] on 06.10.2017 and the same were dismissed . Paragraph no.8 onwards read as follow:

8. Having considered the facts and circumstances and submissions of learned counsel for the parties, the Court does not find any merit in the present writ petitions. First and foremost, the judgment of the Hon'ble Supreme Court in the case of Rajasthan Wakf Board (supra) squarely covers the issue before this Court as the facts of the said case which have been stated in paragraphs no. 6, 7 and 8 of the judgment are similar to the facts of the present case. Moreover and more importantly, just because the petitioner has not denied the fact that till 1973 the property was Wakf property would not mean that the property being a Wakf property is not in dispute. The Court is surprised at the interpretation given by learned counsel for the petitioner that since it is admitted that in the year 1973 the property was Wakf property would mean that the nature of the property being Wakf property is not in dispute. Nothing can be more



erroneous, misconceived, misplaced and fallacious in such understanding, for the simple reason that, in the years 2014 and 2016 when Title Suits No. 10 of 2014 and 7 of 2016 were filed before the Tribunal, the central and moot question was that the property was disputed to be Wakf property as the claim was that it had become a purely private property owned by the petitioner and that too from the year 1973 itself. Thus, clearly as on day the Title Suits were filed, the dispute started with the issue as to whether the property in question was Wakf property, which obviously is denied by the petitioner as he claims that it is not so and it is his private property right from the year 1973. The attempt of learned counsel for the petitioner to take the Court to the facts of Bhanwar Lal (supra) of the Hon'ble Supreme Court is equally misplaced for the reason that after considering the said decision and another decision of the Hon'ble Supreme Court, the judgment has been passed in the case of Rajasthan Wakf Board (supra). The



same categorically states that the question as to whether the property was Wakf property or not can be decided only by the Tribunal and not by the Civil Court, the relevant being at paragraph no. 27 of the aforesaid judgment, and is the direct answer to the submissions made by learned counsel for the petitioner, and thus, has rightly relied upon by learned counsel for the Board.

9. For the reason aforesaid, the writ petitions stand dismissed.

10. However, it shall be open to the petitioner to raise all the points available to him before the Tribunal itself, which shall be decided by the Tribunal, in accordance with law while finally deciding the suits.

11. Further, as both the Title Suits are pending before the Tribunal between the Board and petitioner and other similarly situated persons, it would be appropriate that they are heard and disposed off together.

11. Aggrieved by the said order, the review petitioner



moved before the Appellate Court by filing **LPA No. 1554 of 2017 (Qjair Ahmad Khan vs. State Sunni Waqf Board & Ors.)** against the order passed in **CWJC No. 7838 of 2015**. The Division Bench presided over by the then Hon'ble the Chief Justice on **13.11.2017** took up the matter and taking note of section 89 of 'the Waqf Act' observed that the learned Single Judge has not addressed the said issue. Thus, liberty was granted to the appellant to prefer review petition. Another **LPA no. 1463 of 2017** filed against the order passed in **CWJC no. 12357 of 2018** was disposed of on **29.06.2018** by another Division Bench following the order passed in **LPA no. 1554 of 2017**. This is how the present Civil Review petition came to be filed.

12. Learned Senior Counsel representing the review petitioner submits that section 89 of 'the Waqf Act' is clear: when the Waqf Board is one of the party defendant, notice has to be issued mandatorily to it failing which the Suit is not maintainable. He has taken this Court to the words used in the said section to support the claim. Further, in support of the case, he cited the order of the learned Single Judge of **Bombay High Court in Civil Revision No. 242 of 2007 (Syed Abdul Razzaq Aminuddin and Anr. vs. Maharashtra State Board of Waqf)** to submit that even if the Board is a proforma party, notice has



to be issued.

13. Learned Senior Counsel further submits that now that 'the Board' itself has come forward and filed **Title Suit No. 07 of 2016** before 'the Tribunal', in that background, the claim of the private respondents automatically goes as even their claim is that the property belongs to 'the Board' in the earlier petition which has not come forward and is agitating the matter.

14. Mr. Helal Ahmad, learned counsel representing 'the Waqf Board' has filed counter affidavit in which their stand is that 'the Board' being proforma party in Title Suit No. 10 of 2014, non-issuance of notice in no way affects the health of the case. He however submits that since the review petitioner is claiming the land to be his own property which is actually the Waqf property, 'the Board' in order to protect its interest came forward and preferred **Title Suit No. 07 of 2016** which is presently pending before 'the Tribunal'.

15. Mr. Sajid Salim Khan, learned Senior Counsel representing the respondent no.3 submits that the Writ Court clearly recorded all the facts which resulted into dismissal of the petitions holding that both the Title Suits of the private respondent as also the Waqf Board can be heard together. The review petition as such is fit to be dismissed.



16. The original plaintiffs of Title Suit No. 10 of 2014 (Anoop Kumar Gupta & Anr.) are represented through Mr. Syed Asghar Najmi and according to him, the absence of issuance of notice under section 89 of 'the Act' will not affect the health of the case. He however submits that now as 'the Board' has come forward to claim its land by filing **Title Suit No. 07 of 2016** and since they have also been made parties to it, they shall be agitating the matter in the said Suit.

17. Having heard the parties at length, the question before this Court is: whether the absence of notice to 'the Waqf Board' under section 89 of the Waqf Act will affect the merit of T.S. no. 10 of 2014.

18. For the proper appreciation, this Court would like to re-record Section 89 of 'the Act' which read as follows:

'Section-89: No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name,



description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.”

19. The claim of plaintiff in the Title Suit No. 10 of 2014 is/was that the Suit property belongs to the Waqf Board which the defendants/review petitioner are claiming to be their personal property. However, since the plaintiffs sought remedy against private defendants and not Waqf Board, it being proforma party, notice under section 89 of ‘the Act’ was not required.

20. This in the opinion of the Court is an erroneous stand. Here is the case of the plaintiffs that the review petitioner are claiming the property of the Waqf Board. In that background, it was mandatory on their part to follow section 89 of ‘the Act’ by delivering a notice to ‘the Board’. When it has been made a party to the suit, ‘the Board’ should have been necessarily put on notice before the filing of the Suit as mandated in the aforesaid section.

21. The order of the **Bombay High Court in Syed Abdul Razzaq Aminuddin** (supra) is taken into account which read as follows:



18. In the said context, the contention of the learned counsel for the petitioners, that if the petitioners succeed in demonstrating that the acts challenged of the defendants are not in consonance of the provisions of the Wakf Act, 1995 then notice under Section 89 of the Wakf Act, 1995 would not be necessary, would amount putting the cart before the horse, and hence, there is no substance in the said argument. Moreover, it is also seen that the main relief sought in Suit no. 109 of 2007 is against the Maharashtra State Board of Wakfs, Aurangabad and, therefore, the said relief is against the said authority and not against its Chief Executive Officer and therefore also, as rightly pointed out by Shri P.V. Mandlik, learned Senior counsel for respondent no. 17 notice under Section 89 of the Wakf Act, 1995 prior to institution of Suit No. 109 of 2007 by the petitioners/plaintiffs herein is mandatory and the said non-issuance of mandatory notice under Section 89 of the Wakf Act, 1995 prior to institution of Suit No. 109 of



2007 is certainly fatal to the case of the petitioners.

22. This Court is thus of the opinion that ‘the Tribunal’ erred in rejecting the preliminary objection of the review petitioner vide an order dated 13.03.2025 in Title Suit No. 10 of 2014. This Court is in complete agreement with the Bombay High Court judgment in Syed Abdul Razzaq Aminuddin (supra) that the notice under Section 89 of ‘the Act’ is mandatory when ‘the Board’ is party to the suit.

23. Having recorded the aforesaid facts, this Court has taken note of the fact that in between, another development took place and ‘the Board’ realising its property is at stake too came forward and preferred/filed **Title Suit No. 07 of 2016** before ‘the Tribunal’ which is pending and both the plaintiffs and defendants of the Title Suit No. 10 of 2014 have been impleaded as parties in the said suit.

24. Thus, the closure of further proceedings in **Title Suit No. 10 of 2014** will not affect the health of either the plaintiffs and/or the defendants/review petitioner as they will have the opportunity to present their respective stand in **Title Suit No. 07 of 2016** filed by ‘the Board’.

25. At this stage, learned Senior Counsel for the



review petitioner submits that probably and to his knowledge, the plaintiffs of Title Suit No. 10 of 2014 have not been impleaded as defendants by 'the Board' in the Title Suit No. 07 of 2016. Learned counsel representing the original plaintiffs of Title Suit No. 10 of 2014 refutes the same and submits that it is a wrong statement and they too are parties to the Title Suit No. 07 of 2016.

26. 'The Tribunal' shall verify the matter and if necessary shall be issuing notices to all the necessary parties in the case before the matter is taken to its logical conclusion.

27. In the aforesaid facts and circumstances, while allowing 'the Tribunal' to go ahead with the **Title Suit No. 07 of 2016** filed by 'the Waqf Board'; this Court holds that so far as the **Title Suit No. 10 of 2014 (Anup Kumar Gupta & Anr. vs. Bihar State Sunni Waqf Board and Ors.)** is concerned, the curtains should be lowered in the aforesaid case and the file be consigned. In short, 'the Tribunal' shall close the proceedings of the **Title Suit No. 10 of 2014** and shall proceed only with the **Title Suit No. 07 of 2016** filed by 'the Board'.

28. Needless to add, the status quo as existing today shall be maintained with regard to the suit property by all the parties. The agitating parties are duty bound to present proper



petition(s) before ‘the Tribunal’ in next eight weeks for grant of interim protection, if any, in the matter. In case, it is filed within the aforesaid period, ‘the Tribunal’ shall be duty bound to pass an order in the said petition after hearing the necessary parties in next six weeks. Till ‘the Tribunal’ takes a decision in the matter and passes an order relating to interim protection, the status quo as existing today shall be maintained.

29. It is further made clear that if the parties fail to present a proper petition within the next eight weeks; the status quo order passed today shall come to an end.

30. With the aforesaid direction(s), the review petitions stand disposed of.

(Rajiv Roy, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.07.2025
Transmission Date	NA

