

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.758 of 2025

Shubham Kumar Son of Late Jyoti Chandra Vaishyakiar, Proprietor of Jagdish Iron Works, at Tikari Road, Police Station- Kotwali, District- Gaya- 824236.

... .. Appellant/s

Versus

1. The Bihar State Sunni Waqf Board 34, Ali Imam Path, Haj Bhawan, Harding Road, Patna- 800001.
2. The Chief Executive Officer, Bihar State Sunni Waqf Board, 34, Ali Imam Path, Haj Bhawan, Harding Road, Patna- 800001.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Adil Abbas, Advocate
For the Respondent/s : Mr. Md. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 05-02-2026

Heard Mr. Rashid Izhar, learned counsel for the appellant and Mr. Md. Helal Ahmad representing the Bihar State Sunni Waqf Board (henceforth for short, 'the Waqf Board').

2. The present appeal has been preferred for the following relief(s):

“against the judgment and order, dated 08.07.2025 passed in Title Suit No. 02 of 2024 passed by the Chairman and Member of Bihar State Waqf Tribunal, Patna, whereby the Suit was dismissed at the stage of admission stage itself referring to the pendency of an Eviction Application No. 13 of 2020 earlier filed on behalf



of the Defendant and filing of this suit may delay the Eviction Proceeding which is contrary to the law prescribed for dismissal of suit at admission stage and certified copy was received on 06.08.2025.”

3. The claim of the appellant is that he is a tenant of the family members of Prayag Lal with whom the land was settled by Baldev Lal Tatwari. In the year 1945, the land owner gave 600 square feet of land from the eastern side for offering ‘*namaz*’ to a particular community. For the rest of the land, the ownership right continued with the family of the Prayag Lal and the appellant is/was under tenancy with the said family and also paying rent to their caretaker, Noor Khan and later to his son, Anwar Hussain till 2012 whereafter no one came forward to receive the rent.

4. The submission is that treating the entire land to be its own property, ‘the Waqf Board’ preferred **Eviction Application No. 13 of 2020** against the appellant and expecting immediate eviction, he preferred **Title Suit No. 02 of 2024** before the **Bihar State Waqf Tribunal** (henceforth for short ‘the Tribunal’).

5. It came to be dismissed on **08.07.2025** at the point



of admission itself holding that when the Eviction Application No. 13 of 2020 is pending, after lapse of four-five years, filing of the Title Suit raises eyebrows and it will only delay the disposal of the Eviction Suit.

6. Aggrieved, the present appeal.

7. Learned counsel for the appellant has taken this Court to **Section 54** of the **Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995** (henceforth for short 'the Act') relating to the removal of encroachment which read as follows:

54. Removal of encroachment from ¹[waqf] property.—(1) *Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is ¹[waqf] property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the*



encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is ¹[waqf] property and that there has been an encroachment on any such ¹[waqf] property, ²[he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the ¹[waqf].

³[(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be



vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.]”

8. Learned counsel for the appellant submits that he is not a tenant of the Waqf Board, rather for decades, he is enjoying tenancy over the land through its owner, the family of Prayag Lal.

9. The contention is that very limited scope is there in the Eviction proceeding and the appellant, on the one hand, is



having tenancy rights with the family of Prayag Lal; treating him as encroacher, an application has been preferred and he does not expect a fair order.

10. Mr. Md. Helal Ahmad representing 'the Waqf Board' disputes the said contention of the appellant and submits that the **proviso of section 54** clearly shows that any order has to be passed only after giving an opportunity of hearing to the person against whom the application has been made.

11. The submission is that the petition has been noticed, will have all the opportunity to bring on record the facts to show that he is not an encroacher rather a tenant. However, once the present eviction application was filed, 'the Tribunal' rightly took note of the fact that four-five years later, filing of the Title suit raises eyebrows. He submits that the appellant only wants delay of the suit.

12. Mr. Ahmad submits that on the one hand, the appellant claims himself to be the tenant of the family members of Prayag Lal and on the other hand; he prefers Title Suit for a declaration on the basis of adverse possession which clearly shows his fraud intention.

13. This Court has gone through the facts of the case and the materials on record beside the submission of the parties.



As rightly pointed out by Mr. Ahmad, on the one hand, the appellant claims himself to be the tenant of the family of Prayag Lal and refuses to accept the land to be part of 'the Waqf Board', when a notice has been issued for removal of encroachment. On the other hand, he prefers Title Suit for declaration of his title on the basis of adverse possession.

14. **Section 54 of 'the Act'** has been incorporated and learned counsel representing 'the Waqf Board' rightly observed and even in the interest of justice, when a notice has been issued, 'the Tribunal' is duty bound to give an opportunity to the appellant to submit its response and show his *bonafide* that the appellant is not an encroacher rather is tenant of Prayag Lal.

15. Without availing the said remedy of filing show cause before 'the Tribunal', he preferred Title Suit where family members of Prayag Lal were even not impleaded as parties to support his case.

16. This Court further records that it has also taken note of the fact that though the appellant claims himself to be the tenant of family of Prayag Lal, they were left out in the list of defendants in the Title Suit and as respondents in the present appeal too.



17. The facts have been recorded, the appellant has opportunity to put forward his view before 'the Tribunal'. There is no reason to interfere with the order dated 08.07.2025 passed by 'the Tribunal' in the Title Suit No. 02/2024.

18. With the aforesaid observation, the M.A. No. 758 of 2025 stands disposed of. Interlocutory Application, if any, also stands disposed of.

(Rajiv Roy, J)

Adnan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.02.2026
Transmission Date	

