

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.68 of 2019

Satya Narain Sharma Son of Late Sheetal Mistry R/o of Mohalla-
Chowkshikarpur, Nalapar, Under P.S. Chowk, P.O. Jhauganj, Patna
City, Distt. Patna, Pin-Code-800008.

... .. Petitioner/s

Versus

The Chief Executive Officer Bihar State Sunni Waqf Board, Haj
Bhawan Road under P.S. Gardanibagh, Distt. Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manager Sah, Advocate

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

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 06-09-2022

Heard learned counsel for the parties.

This Revision Application is directed against the order dated 13.02.2019 passed by the Bihar State Waqf Tribunal, Patna (in short 'the tribunal') in Eviction Application No. 1/2017.

The Chief Executive Officer, Bihar State Sunni Waqf Board (in short 'the Board') filed eviction application being Eviction Application No.01/2017 before the Bihar State Waqf Tribunal, Patna against the petitioner and his father (now deceased) who occupied the Waqf land of Waqf Estate No. 362, Imambara, Patna City illegally and has not paying the rent due



as such he has been declared as encroachers of the said Waqf area occupied by them. An enquiry was conducted by Waqf Board and it comes to the knowledge of Waqf Board that Sheetal Prasad (Father of petitioner) occupied large area of Waqf land and his son (petitioner) running timber mill over it and deliberately paying low rent and also constructed his house on Waqf land. It was also found that they have not paid rent since March, 2006 to September, 2013. A notice dated 16.09.2013 was issued to vacate the premises and to pay all the rent due @ Rs. 10 per square feet within 15 days which was replied admitting his tenancy @ Rs.700/- per month and further stated that he paid a sum of Rs.51,000/- only as P.M.C. tax on behalf of Board and the Board has no right to fix fair rent. It was found that either Shital Mistry or Satya Narain Sharma (Opposite Parties in application) have neither any agreement in their favour nor they are paying rent since long and damaging the Waqf property, issued notice to them for not paying rent for more than two consecutive months to which he is liable to be evicted u/s 54 of the Waqf Act 1995 [as amended vide Amendment Act, 2013]. The office of the applicant Waqf Board in order to ascertain factual position a report submitted by the staff concerned that Opposite Party occupied and carrying his



business in the Waqf land without payment of rent. The petitioner was declared encroacher of waqf land within the meaning of Section 3(ee) of the Waqf Act vide order date 25.11.2014. During the course of proceeding before Tribunal, due to death of Shettal Prasad his name was deleted vide order dated 24.08.2017.

Considering the facts and material on record, the Tribunal held that the CEO, Bihar State Sunni Waqf Board has rightly held that the Opposite Party (petitioner herein) being tenant of the Waqf Estate No. 362 has not paid rent since March 2006 to September, 2013 and has become encroacher within the meaning of Section 3 (ee) of the Waqf Act of the Waqf Estate No. 362 and opposite parties are fit to be evicted.

It is submitted by learned Counsel for the petitioner that the impugned order is illegal and arbitrary and liable to be set aside on the ground that the learned Waqf Tribunal has illegally and arbitrary held O.P. No. 2 (petitioner herein) to be encroacher within the meaning of Section 3 (ee) of the Waqf Act without complying mandatory provision as provided in Section 54 (1). It is further submitted that no notice was served upon the petitioner as required under Section 54 and has not been given any opportunity to be heard before filing of eviction application.



It is further submitted that the Tribunal gave a finding about the fair rent without considering the case of petitioner and illegally directed the petitioner to pay a damage Rs.5,000/- per day when no prayer has been made by the applicant or nothing has been produced to prove the damage. It is further submitted that Sheetal Mistry had died on 30.04.2015 before filing of the application and as such the application amounts to a nullity. It is lastly submitted that a lawful tenant can be evicted by the order of competent Civil Court and the Tribunal has no jurisdiction in this regard.

In counter affidavit filed by Opposite Party Waqf Board, it is stated that Rule 48 of the Bihar Waqf Rules, 2002 provides procedure for determination of rent by Board and any person aggrieved against such decision having remedy to file appeal before the learned Waqf Tribunal under Rule 48 (4) of the Bihar Waqf Rules, 2002 but the said order of rent determination was not challenged by the petitioner. Learned counsel for the Opposite Party submits that after following due process of law and giving fair opportunities to deposit the due rent left with no alternative than to declare them encroachers, by the Opposite Party vide order dated 25.11.2014, within the meaning of Section 3(ee) of the Waqf Act, 1995 as amended (Amendment



Act, 2013) over Waqf property.

Learned counsel for the Opposite Party also pointed out that despite the undertaking given before this Court on 19.11.2019 on behalf of petitioner that he is ready to pay rent of Rs.33,000/-per month and will pay the arrear of rent of land three years from the date of filing of Eviction Application No.1 of 2017 within six months but unfortunately till date no amount of rent has been paid by him in the Waqf Board and thus the petitioner disobeyed the same and not come before this Court with clean hand and on this score alone this Revision is liable to be dismissed.

Rule 48 of Bihar Waqf Rules, 2002 provides for determination of rent of Waqf Land or building by the Board. It is provided that if there is reason to believe that the rent of Waqf land, building or premises is either low or excessive, it shall authorize the Chief Executive Officer or any other Officer of the Board to hold a summary enquiry and determine the fair rent. The CEO shall fix rent after giving the parties affected, proper opportunity of being heard which shall be binding upon the tenant or the licensee. Sub-rule 4 of Rule 48 provides that a tenant or the licensee, whoever it may be is aggrieved by the order of the Chief Executive Officer, he may file an appeal



against the said order before the tribunal. Admittedly, the petitioner has not challenged the order of fixation of rent in appeal before the Tribunal and the said order became final and is not permitted to raise such issue in Eviction Application or in this Revision Application.

Now, this Court has to consider the question as to whether Eviction Application in respect of Waqf property is maintainable before the Tribunal or only the Civil Court has jurisdiction to pass eviction order against the tenant?

The Waqf Act, 1995 provides for the setting up of Waqf Tribunals to consider questions and disputes pertaining to Waqf. Section 83 of the Waqf Act, 1995 provides for constitution of Tribunals etc. for the determination of any dispute, question or other matter relating to a Waqf or Waqf property under the Act. The words "Eviction of tenant or determination of rights and obligations of the lessor and the lessee of such property" were inserted in Sub-section (1) of Section 83, after the words "Wakf Property" by Amendment Act 27 of 2013.

Section 85 of the Waqf Act, 1995 provides bar of jurisdiction of Civil Court which reads as follows.

“85. Bar of jurisdiction of Civil Courts - No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf - Wakf property or other matter which is



required by or under this Act to be determined by the Tribunal”.

The words, ‘Civil Court’ were substituted by the words “Civil Court, ‘Revenue Court’ and ‘other authority” in Section 85, by Amendment Act 27 of 2013.

Thus, Act 27 of 2013 did two things. First it expanded the jurisdiction of wakf Tribunal even to cover landlord-tenant disputes and the rights and obligations of lessor and lessee. Second, the Amendment Act enlarged the bar of jurisdiction, to cover even Revenue Courts and other authorities.

In the decision in **Ramesh Gobindram Versus Sugra Humayun Mirza Wakf reported in (2010) 8 SCC 726** the Hon’ble Supreme Court observed that the wakf Act, 1995 does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of tenant in occupation of wakf property or the rights and obligations of the lessor and lessees of such property and accordingly held that a suit for eviction of tenants from what is admittedly Waqf property could be filed only before the Civil Court and not before the Tribunal.

The Hon’ble Supreme Court in the recent judgment in **Rashid Wali Beg Versus Farid Pindari and others reported in (2022) 4 Supreme Court Cases 414** discussed all the



relevant judgments on this point and elaborately discussing the relevant provisions of Wakf Act, 1995, held that the basis of decision in Ramesh Gobindram stands removed by amendment Act, 27 of 2013. In paragraph 54 of the Judgment it is summarized that “in sum and substance, the Act makes a reference to 3 types of remedies, namely, that of a suit, application or appeal before the Tribunal, in respect of the matters (sub paras 54.1 to 54.20) listed therein which includes 54.19. Eviction of a tenant or determination of the rights and obligations of lessor and lessee of Waqf property (Section 83(1) after its amendment under Act 27 of 2013). Paragraph 56 of the Judgment summarized that a combined reading of Sections 68(6), 86, 90 and 93 shows that the bar of jurisdiction under Section 85 does not apply at least to the matters (listed in sub paras 56.1 to 56.4) covered by Section 68(6), 86 and 90 (i.e. to approach Civil Court).

In view of the ratio of Judgment of Hon’ble Supreme Court in Rashid Wali Beg Versus Farid Pindari and Others reported in (2022) 4 Supreme Court Case 414 and Amendment Act, 27 of 2013, it is clear that Bihar Waqf Tribunal, Patna has jurisdiction for passing order for eviction of tenant.

In the case on hand, the property is admitted to be a



Wakf property and it is now well settled that the eviction application is maintainable before the Tribunal as discussed above. Accordingly, the contention of the petitioner that the Tribunal has no jurisdiction is liable to be rejected.

In view of the above discussions, in my view, the Tribunal has acted according to law and there is no illegality in the impugned order. In the result, this Revision has no merit, hence dismissed.

(Sunil Dutta Mishra, J)

kamlesh/-

AFR/NAFR	NAFR
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