

(2006) 11 PAT CK 0029
In the Patna High Court
Case No : M.J.C. No. 596 of 2005

Faiz Murtaza Ali

APPELLANT

Vs

Syed Askari Hadi Ali Augustine Imam

RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Citation : (2007) 1 PLJR 130

Hon'ble Judges : Samrendra Pratap Singh, J;Aftab Alam, J

Bench : Division Bench

Advocate : K.N. Gupta and Shankar Kishore Shahi, for the Appellant;

Final Decision : Dismissed

Judgement

1. This petition is filed by one Faiz Murtaza Ali praying for modification of an order passed thirteen years ago on 27.8.1993 in M.J.C. Nos. 770, 1010 and 974 of 1993. Heard Mr. Gupta in support of the modification petition.

2. This is yet another attempt to somehow grab and appropriate under personal ownership a prime property commonly known as "the Rizwan" located in the heart of the city. For over half a century, it was known to the world as part of a Waqf created by Mr. Syed Hasan Imam, Bar-at-Law, one of the luminaries of the bar of this court. It may be mentioned here that shortly after the demise of Mr. Imam in the third decade of the previous century a dispute arose between his second (English) wife Natie Imam and the children from his first deceased wife. The matter came to this court and at the instance of the court the dispute between the parties was referred to the joint arbitration of two sitting Judges of the court, namely, Macpherson and Khwaja Muhammad Noor JJ. Before the arbitrators Natie Imam claimed that "the Rizwan" was given to her by her late husband and it was, therefore, her personal property. The arbitrators however, rejected the claim and found and held that "the Rizwan" was very much part of the Waqf created by Mr. Hasan Imam. The arbitration award divided the Waqf, and the Rizwan" in the ratio of 10 Annas and 6 Annas., Natie Imam was

appointed as the Motawalli of the 6 Annas block with her son S.A.H.A.A. Imam @ Tutu Imam as the sole beneficiary. Of the 10 Annas block Mr. Syed Mehdi Imam, the eldest son of Mr. Hasan Imam from his first wife was appointed as the Motawalli with a number of beneficiaries, being the daughters of the waqif and their children. After a while Natie Imam passed away and her son S.A.H.A.A. Imam was appointed in her place as the Motawalli and the sole beneficiary of the 6 Annas block. This arrangement continued for about half a century before S.A.H.A.A. Imam woke up to the idea that "the Rizwan" was not part of the Waqf but it was his personal property by devolution. He filed suits for a declaration to this effect and other consequential reliefs. Counter suits were also filed by the other side.

3. Even before a decision could be rendered in any of the suits S.A.H.A.A. Imam and some others took away out of the legal process and started selling properties hitherto part of the waqf at throw-away prices. The sales were made to musclemen who needed just a scrap of pseudo-legal paper to enter the property and dispossess its lawful beneficiaries under the Waqf by muscle power. Many valuable properties of the Waqf were, thus, lost and threat also loomed over "the Rizwan".

4. At the time this controversy erupted, "the Rizwan" was in the occupation of a Central Govt. Organisation as tenant. The rental paid by it was divided in the ratio of the 10 Annas and the 6 Annas between Syed Mehdi Imam and S.A.H.A.A. Imam, the respective Motawallis of the 10 Annas and the 6 Annas Blocks. At that time the tenant decided to vacate the property and it became all the more vulnerable to unlawful sale(s) and illegal occupation(s) etc. During the long tenancy of the Central Govt. Organisation the property had also suffered encroachments and trespass by strangers and anti-social elements. At that stage the Dist. Magistrate, Patna took steps to evict everyone from the premises of "the Rizwan". The steps taken by the Dist. Magistrate were viewed by S.A.H.A.A. Imam as an interference with his rights over the property and he came to this court in writ petitions being CWJC Nos. 98 and 228 of 1992. In CWJC No. 98 of 1992 Mrs. Syeda Mehdi Imam, the widow of Syed Mehdi Imam (who was by then dead) was impleaded as respondent No. 9. Apart from her, a number of others intervened in the proceeding and joined as respondents. One Dr. Ali Ahmad Sami, who claimed to be the duly appointed Motawalli of Hasan Imam Waqf Estate 10 Annas block, including "the Rizwan" was added as respondent No. 10, Shamim Amna Imam daughter of Syed Mehdi Imam as respondent No. 11 and the Bihar State Shia Waqf Board through its Secretary as respondent No. 12. All of them maintained that "the Rizwan" was part of Hasan Imam Waqf Estate and were strongly opposed to the claim of S.A.H.A.A. Imam that it was his personal property and resisted the attempt by him to take possession of the entire property. Those writ petitions were disposed of by a Bench of this court by judgment and order, dated 9.4.1993 in which a number of directions were given not only to the district administration but also to the various sides claiming rights and interests in the property. The decision also took note of the past history of

"the Rizwan" in some detail.

5. Later, contempt petitions being M.J.C. Nos. 770, 1010 and 974 of 1993 were filed alleging violation of the directions given by this court in the judgment and order, dated 9.4.1993 in the aforesaid two writ petitions. In those three contempt petitions the court passed the order, dated 27.8.1993 giving directions to keep the property safe from pretenders, usurpers and land grabbers. S.A.H.A.A. Imam claimed that "the Rizwan" was not Waqf and that it had come to him through devolution. The other side maintained that "the Rizwan" was Waqf nevertheless, the position of S.A.H.A.A. Imam as Motawalli of the 6 Annas block in the property was not disputed. The Court, therefore, without expressing any opinion about the rights of the parties, asked the Collector, Patna to permit S.A.H.A.A. Imam to take possession of the 6 Annas block of "the Rizwan" (already demarcated and assigned separate holding number).

6. As regards the 10 Annas block of the property the court made the following directions:

"So far as the remaining portion of the building is concerned, in our judgment we have not expressed any opinion on the question of possession and as would appear from paragraph 19 of the judgment, the matter was left open and the parties claiming right to possession of the premises were at liberty to obtain suitable orders from a civil court of competent jurisdiction. In case Union of India continued in possession, we had given liberty to the Union of India of handing over possession to the party who had inducted it as tenant. It is, therefore, obvious that on the question of possession of 10/- annas block of the building, which appertains to holding No. 208(old)/266(new), we had not recorded any categorical finding but the parties were directed to abide by any order that may be passed by a court of competent jurisdiction. We direct the District Magistrate to respect the order and till such time any of the parties produces a copy of the order of a competent court, he shall keep 10/- annas premises sealed, and none of the parties shall interfere in this regard.

"Learned Advocate General assures us that if any person is in occupation of 10/- annas premises or 6/- annas premises in an unauthorised manner, he will be removed by the District Magistrate, as soon as possible." (emphasis added)

7. So far no court has passed any decree, judgment or order declaring that "the Rizwan" was the personal property of S.A.H.A.A Imam or anyone else. In the eyes of law, therefore, it continues to be a Waqf property with duly appointed Motawallies for the two blocks. In these circumstances Faiz Murtaza Ali, the present petitioner has come to this court seeking a modification of the order dated 27.8.1993 and for a declaration that the 10 Annas block was his personal property and he could do with it as he wished. The prayer is made on the following grounds.

8. It is stated that one Pramod Kumar Sharma filed a suit for specific performance being T.S. No. 215 of 2004 in the Court of Sub-Judge II, Patna

impleading Faiz Murtaza Ali as the sole defendant. In the plaint it was stated that Faiz Murtaza Ali had executed an agreement for sale in favour of the plaintiff with respect to a portion of the Rizwan on the basis of a Will executed in his favour by Syeda Mehdi Imam. It is interesting to note that in the complaint even that Will was described as a fake one.

9. In that suit S.A.H.A.A. Imam had sought to intervene but later on he withdrew the intervention petition stating that he had no concern with the suit or the reliefs prayed for in it. The action of S.A.H.A.A. Imam in filing an intervention petition and later withdrawing it is said to be sufficient evidence to establish that the property belonged to Faiz Murtaza Ali. To a query by the court as to what was the basis of his claim over the property it was replied that Syeda Mehdi Imam the widow of Syed Mehdi Imam was now dead and he was the only heir left behind by her.

10. It is difficult to imagine a more hollow and flimsy argument than this. Any question of inheritance can arise only in case of personal property of the deceased. As noted above "the Rizwan" was held to be a Waqf property as far back as in 1934 and it has been treated as such since then. Though suits were filed for declaring it as outside the Waqf and the personal property of S. A.H.A.A. Imam, no court has yet passed any such judgment and order. Here it is important to bear in mind that Syed Mehdi Imam always maintained that "the Rizwan" was Waqf; he strongly opposed the suits filed by S.A.H.A.A. Imam and resisted all attempts to claim "the Rizwan" as anyone's personal property. After him, his wife also took the stand that the Rizwan was waqf. We, therefore, fail to see what interest the present petitioner may have in the property. Not being in the line of descendents of Syed Hasan Imam, the waqif, for all one knows, he would not be even a beneficiary to the property. Since Syed Murtaza Ali claims under Syed Mehdi Imam, it appears all the more ironical because both her husband and she herself spent their entire lives treating the property as Waqf and fighting the claim of S.A.H.A.A. Imam that it was his personal property. It appears quite strange and unfortunate that someone claiming under Syed Mehdi Imam and his wife Syeda Mehdi Imam should try to lay personal claim over the property.

11. For the reasons discussed above we have no hesitation in holding that the claim of Faiz Murtaza Ali is utterly frivolous and untenable and there is no merit in his prayer for modification of the order, dated 27.8.1993 passed by the court.

12. This court reaffirms the earlier direction with respect to "the Rizwan" and makes the Secretary, Minority Welfare and Waqf, Bihar, the Chairman/Secretary, the Bihar State (Shia) Waqf Board, the Dist. Magistrate, Patna and the Supdt. of Police, Patna personally responsible for strict compliance with the directions of this court as contained in the order, dated 27.8.1993.

13. This M.J.C. petition is dismissed.

14. At this stage in the dictation of the order the Advocate General who is

present in the court in connection with some other cases stood up and said that it was both unfortunate and shameful that the waqf properties, including the properties of Hasan Imam Waqf Estate, were being wasted in the State and the court may direct for a proper enquiry in the matter. We appreciate the concern shown by the Advocate General who, we presume, speaks on behalf of the State Government but we see no need for a formal direction by the court in the matter. There are sufficient provisions in the Waqf Act, 1995 for the safeguard and retrieval of waqf properties and the State Govt., will be free to examine the affairs of the waqfs and to take effective steps for safeguarding waqf properties and for retrieval of waqf properties that are lost as a result of illegal sales/encroachments/unauthorised occupations etc. Let a copy of this order be given to the J.C. to the Advocate General. A copy of the order may also be transmitted to the court in seisin of Title Suit No. 215 of 2004.