

(2003) 01 JH CK 0090
In the Jharkhand High Court
Case No : CWJC No. 4289 of 2000

Khadim Mohammad Maqbool (Sajad Nashin Mutwalli)	APPELLANT
Vs	
Bihar State Sunni Wakfs Board and Others	RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1954 — Section 83
Waqf Act, 1995 — Section 83

Citation : (2003) 2 JCR 284

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; R.S. Majumdar, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. P.K. Prasad, learned counsel for the petitioner and Mr. R.S. Majumdar, learned counsel for the respondents.

2. From a perusal of the pleadings of this writ application and also upon perusal of different annexures, it appears that Md. Alamgir (respondent No. 2) had initially filed Title Suit No. 95 of 1987/16 of 1988 with a prayer that he should be declared "KHADIM" of Mazar Sarif and Hazra Sarif of the Saint Baba Chudi Shah. That suit was dismissed and the Court below held that the Plaintiff was not the "KHADIM". It appears that thereafter he filed an appeal in the Court of the Second Additional District Judge, Giridih vide Title Appeal No. 85 of 1988 and that appeal was also dismissed. Consequently a Second Appeal was filed before the then Ranchi Bench of the Patna High Court being Second Appeal No. 186 of 1989 (R) and on 17.10.1990 the said Hon'ble Court held that the Plaintiff had failed to prove that he is a "KHADIM" in respect of the Mazar in question and therefore, the Second Appeal was also dismissed. Subsequently, it appears that a second suit being Title Suit No. 202 of 1993 before the 3rd Additional Munsif, Giridih was also dismissed on the ground that it was barred by res judicata. It also appears that the Sub Divisional Magistrate, Giridih drew up a proceeding u/s

144 of the Code of Criminal Procedure against him as also against Md. Maqbool restraining them from going near the land in question. By an order dated 26.6.1999 passed in Criminal Revision No. 18 of 1999 it was held that restraining the petitioner and further prohibiting him from going near the land in question would amount to divesting him of title right claimed by him on the basis of judicial pronouncements and therefore, he set aside the order of the Sub Divisional Judicial Magistrate.

3. According to the learned counsel for the petitioner, this order was also challenged vide Criminal Miscellaneous No. 4850 of 1990(R) before the then Ranchi Bench of the Patna High Court and on 29.10.1999 the said application was also dismissed. The learned counsel for the petitioner submits that inspite of so many overwhelming orders in his favour, the Secretary of the Board passed an order on 4.10.2000 certifying that the area in question was being registered under the provisions of the Wakf Act, 1954, and that the Chairman on 3.10.2000 has approved the constitution of a Managing Committee which consists of nine members and the first person who has been mentioned in the list is, Md. Alamgir, i.e., the respondent No. 2 in the instant case. Learned counsel for the petitioner states that therefore, what has been achieved indirectly is something which could not have been done directly in view of the aforementioned orders brought on record by the writ petitioner. He further submits that the order is wholly without jurisdiction considering the fact that Wakf Act of 1954 had been repealed and in its place Wakf Act of 1995 had come into force with effect from 1.1.1996. Therefore, in the year 2000 the respondent Board could not have exercised power under an Act which stood repealed in the year 1996.

4. Mr. R.S. Majumdar, learned counsel for the respondents, however, has drawn attention of this Court to the provisions of Section 83 of the Wakf Act of 1995 and have submitted that the writ petition is not maintainable.

5. This Court does not agree with the submissions made by Mr. R.S. Majumdar, because prima facie it appears that the order needs to be decided strictly in accordance with law and after taking into consideration the different judicial pronouncements that have been passed and which have been brought on record by the learned counsel for the petitioner in this writ application.

6. Consequently the impugned registration certificate dated 4.10.2000 is set aside and the matter is remanded to the respondent No. 1 so as to enable it to apply its mind, look into the records including all these documents which have been referred to by the petitioner and which have been brought on record by the writ petitioner and then pass an order strictly in accordance with law within a period of four months from the date of receipt of a copy of this order.

7. Let it be recorded that this order has been passed by the agreement of the parties.

8. With the aforementioned observations and directions, this writ application stands disposed off. However, there shall be no order as to costs.