

**(2002) 06 PAT CK 0019**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 1678 of 2000**

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|---------------------------------|----|------------|
| Phool Mohammad Khan and Another | Vs | APPELLANT  |
| The State of Bihar and Others   |    | RESPONDENT |

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**Date of Decision :** 27-06-2002

**Acts Referred:**

Waqf Act, 1954 — Section 27  
Waqf Act, 1995 — Section 40

**Citation :** (2002) 3 PLJR 284

**Hon'ble Judges :** Shiva Kirti Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Shiva Kirti Singh, J.—Heard the parties in detail at the stage of admission itself. Both the writ petitions traverse some common facts. With consent of the parties they were heard together and are being disposed of by this common order. Keeping in view the nature of controversy and interest of parties it is desirable to first decide the writ petition bearing C.W.J.C. No. 1678 of 2000.

2. This writ petition has been filed by two individuals claiming to be residents of the locality where the property in dispute being claimed by Respondent No. 4 (who is one of the Petitioners in C.W.J.C. No. 1977/2000) is situated and as such they have claimed to be interested persons and have prayed for quashing of a decision of Chairman of the Bihar State Sunny Wakf Board dated 17.5.1996 (Annexure-4) and of a consequential letter dated 18.5.96 issued by the Secretary of the said Wakf Board as contained in Annexure-5 by which the decision of Annexure-4 was communicated to Respondent No. 4 and to Haji Md. Nayeem, Respondent No. 3 who claimed the lands in dispute comprised in plot Nos. 618 and 619 to be a Wakf property and had further claimed to be the Motballi of the said Wakf.

3. The main submission advanced on behalf of the Petitioners was that the Chairman of the Bihar State Sunny Wakf Board or even the Board had no

jurisdiction to hold an enquiry and pass the impugned order contained in Annexure-4 by which it was held that the land in dispute was never a wakf property as claimed by Respondent No. 3. On the other hand, on behalf of Respondent No. 4 as well as Respondent No. 2 the Bihar State Sunny Wakf Board, the aforesaid contention was strongly denied and it was further submitted that the Petitioners are busy bodies and have been set up by others to file this writ petition after about four years of the impugned orders and there is no explanation for such long delay.

4. After considering all the relevant materials and the rival contentions this Court finds no merit in the submission advanced on behalf of Petitioners that the Wakf Board or its Chairman had no jurisdiction to pass the impugned order contained in Annexure-4. On behalf of contesting Respondents reliance was rightly placed upon a judgment of the Karnataka High Court in the case of *Mirza Habib Aga v. Karnataka Board of Wakfs* AIR 1990 Karn 2999 in support of submission that the Wakf Board has such power u/s 40 of the Wakf Act, 1995 which is equivalent to Section 27 of the Wakf Act, 1954. A perusal of Section 40 itself leaves no doubt that the Board has the necessary power of holding enquiry and deciding a question as to whether a particular property is wakf property or not. It is also not in doubt that the Board had made necessary delegation in favour of the Chairman by its resolution dated 9.6.1973 authorising the Chairman to exercise the power and perform the duties of the Board under the: Act in emergent cases. Subsequently the decision of the Chairman was reported to the Board which granted the necessary approval. Thus, on merits this Court finds no illegality in the impugned orders. This Court further finds that the writ Petitioners have failed to show any legal interest in the subject matter of the dispute and they have also failed to explain the delay of four years.

5. For all these reasons this Court finds no merit in C.W.J.C. No. 1678 of 2000 and the same is accordingly dismissed. C.W.J.C. No. 1977 of 2000.

6. This writ petition has been filed by Respondent No. 4 of C.W.J.C. No. 1678 of 2000 and some others who claim to have good title and possession over 2 Kathas 12 dhurs of land comprising survey plot Nos. 614, 615, 620 (part), 618 and 619 situated in Ward No. 7 of Samastipur (Mauza Karimabad, holding No. 159, Tauzi No. 4428 of thana No. 179). The case of the Petitioners is that they purchased the aforesaid two plots of land described in paragraph-7 of the writ petition from son and other successor in interest of one Sharad Kumar Das vide registered sale deed dated 21.12.83. According to Petitioners Sharad Kumar Das had purchased the said land from one Sunil Kumar Bose and others the recorded owners through registered sale deed dated 23.2.1938 but in the sale deed of 1938 by mistake only plot Nos. 618 and 619 were mentioned although from boundaries etc. the entire plots of lands had been purchased by Sharad Kumar Das. Petitioners claim to have sold 8 dhurs of their purchased lands in the year 1987 to Rajkumari Devi and Govinda Devi. They also claim that Petitioner No. 1 was mutated in respect of the land in question vide order dated 30th June 1987

passed in Mutation Case No. 26/87-88 and as a result Jamabandi No. 41 running in respect of the land in question was mutated in favour of Petitioner No. 1.

7. On behalf of Petitioners it was shown that mother of Respondent No. 6, Mohini Devi filed title suit No. 47/93 before the Civil Court concerned in which her prayer for injunction was refused in December 1993 and a Misc. Appeal followed by a civil revision filed by her in the injunction matter were also dismissed by competent civil Courts in 1994 and 95 respectively. No appeal was preferred by any one against the order of mutation but Respondent No. 6 filed an objection before the Assistant Superintendent of Survey, Samastipur leading to objection case No. 61/05. with a prayer to delete the name of Petitioner No. 1 from revenue records with respect to plot Nos. 618 and 619. The said objection was rejected on 25.7.96. The claim of some persons to get the said plots declared as wakf property also failed as per order of Chairman of the Sunny Wakf Board. The person who had claimed to be Motaballi of the wakf had filed a title suit No. 133 of 1995 before the Civil Court and the said suit was decided in favour of Petitioner No. 1 and others vide judgment and order dated 9.1.98 (Annexure-2). An encroachment proceeding against Petitioner No. 1 on the allegations that she had encroached over three decimals of public land of plot No. 618 also culminated in her favour by final order of Collector, Samastipur dated 16.8.95/25.8.95 in Encroachment Appeal No. 263/93-94. It further appears that Mohini Devi, mother of Respondent No. 6 preferred criminal writ petition bearing Cr.W.J.C. No. 299 of 1999 in this Court in which the State of Bihar and its officials supported the case of the present Petitioners and that writ petition was dismissed on 15.5.99. Thereafter Respondent No. 6 and others have filed title suit No. 252/2000 before the Civil Court at Samastipjir and that suit is admittedly pending.

8. However, before filing the aforesaid title suit in the year 2000, Respondent No. 6 filed a miscellaneous petition for cancellation of jamabandi before the Additional Collector, Samastipur on 15.12.1999 raising questions of title and possession as appears from a copy of the said miscellaneous petition/appeal (Annexure-5) and Off that very date the impugned order dated 15.12.1999 as contained in Annexure-6 was passed by the Additional Collector (Respondent No. 2) by which he issued notices to the Petitioners and stayed Jamabandi No. 41 till the disposal of the proceedings and restrained construction of building over the land in dispute.

9. On behalf of the Petitioners, it was submitted that Respondent No. 2, in the facts of the case, had no jurisdiction to pass the impugned order contained in Annexure-6 dated 15.12.1999 and he has attempted to bye-pass the statutory provisions governing mutation under which Anchal Adhikari is the original authority, Deputy Collector, Land Reforms, is the appellate authority and Collector of the District is the revisional authority. It has further been submitted that after injunction has been refused by the civil Court, the Additional Collector could not have assumed jurisdiction in himself so as to restrain the building

construction being made by the Petitioners.

10. On behalf of the Respondent No. 6, who appeared in person, it was strongly urged that this Court should not interfere with the impugned order without examining the documents of the parties relating to title and possession and it was further submitted that the claim of the Petitioners is based upon forged and fraudulent documents etc.

11. After considering the entire facts and circumstances, this Court finds sufficient force in the submissions advanced on behalf of the Petitioners. The Additional Collector could not have assumed jurisdiction to decide the complicated questions of title and possession specially when the matter had been raised before the Civil Court and statutory authority had allowed mutation in favour of the Petitioners. In such circumstances, Respondent No. 6 and others rightly preferred Title Suit No. 252 of 2000 before the civil Court which alone would have jurisdiction to decide the claim of the Respondent No. 6 in accordance with law. The impugned order contained in Annexure-6 is, thus, found to be improper and without jurisdiction and the same is, accordingly, quashed. C.W.J.C. No. 1977 of 2000 is allowed to the aforesaid extent.

12. In the facts of the case, there shall be no order as to costs.