

(2023) 10 PAT CK 0044
In the Patna High Court
Case No : Civil Revision No. 48 Of 2022

Raja Parsauni Wakf Estate No.- 726

APPELLANT

Vs

Dr. Mahrukh Khan

RESPONDENT

Date of Decision : 18-10-2023

Acts Referred:

Waqf Act, 1995 — Section 83, 83(2)

Citation : (2023) 10 PAT CK 0044

Hon'ble Judges : Sunil Dutta Mishra, J

Bench : Single Bench

Advocate : Rupesh Kumar, Raghib Ahsan, Wasi Akhtar, Ashar Akhtar

Final Decision : Dismissed

Judgement

1. Heard learned counsels for the parties.

2. This Civil Revision Application has been filed against the order dated 17.08.2022 passed in Miscellaneous Case No.16 of 2022 by the learned Bihar State Waqf Tribunal, Patna (in short 'Tribunal') whereby the preliminary objections over maintainability and admissibility filed by the petitioner has been rejected and the case has been admitted for hearing on merit.

3. The brief facts of the case are that Raja Md.Yaqub Khan was the landlord of the then Parsauni Estate, who created a waqf through a deed dated 27.01.1934 which was registered with the Bihar State Sunni Waqf Board (in short 'Board') vide Waqf Estate No.726. At the time of execution of the deed of waqf, wakif Raja Yaqub Khan became the first Mutawalli of the Waqf Estate and after his death, his eldest son Babu Salahuddin Haider Khan was appointed as Mutawalli of the Waqf Estate. Later on, Dr. Najmuddin Haider Khan became Mutawalli and died on 27.10.2011 leaving behind opposite party no.2 as daughter and opposite party no.1 as widow. The Board appointed Tarique Anis Khan as permanent Mutawalli of petitioner i.e. Raja Parsauni Waqf Estate No.726 on 20.06.2013. The dispute then arose. The Chief Executive Officer of the Board directed the opposite

party no.1 to hand over the key of two rooms to the petitioner (Mutawalli) on 20.12.2013. The opposite parties against the said orders dated 20.12.2013 and 20.06.2013 regarding appointment of Tarique Anis Khan as Mutawalli filed C.W.J.C. No.5368 of 2014 before this Court, which was disposed of with liberty to move before the Board vide order dated 25.08.2017. The Chairman of the Board vide order dated 21.03.2018 rejected the petition of the opposite parties and directed them to open two rooms situated in the waqf properties. The said order was communicated to the opposite parties by the Chief Executive Officer of the Board vide his letter dated 27.03.2018 with direction to comply the order passed by the Chairman. The opposite parties challenged the said order dated 21.03.2018 vide C.W.J.C. No.10760 of 2018 claiming that those two rooms are not the property of the Waqf Estate rather they are situated on the private land of the opposite parties.

4. On behalf of the Board, it was submitted that the opposite parties have an alternative remedy of filing a suit before the Tribunal under Section 83 of the Waqf Act for redressal of their grievance. The said writ petition was dismissed vide order dated 12.07.2018 with liberty to the opposite parties to approach the Waqf Tribunal, if so advised, for redressal of their grievances. It was held therein that a complete remedy is available to any party, if there is any dispute, question or other matter related to waqf or waqf property.

5. Against the said order, the opposite parties filed L.P.A. No.1026 of 2018 and the Division Bench of this Court vide order dated 18.07.2019 upheld the judgment of Single Judge and observed that in relation to both the reliefs, the appropriate remedy on the facts of the case is clearly available to the opposite parties by approaching the Tribunal. The opposite parties had filed Title Suit No.04 of 2019 before the Tribunal but the same was withdrawn vide order dated 10.03.2022 with liberty to file afresh on the ground of formal defects. The opposite parties then filed Miscellaneous Case No.16 of 2022 under Section 83(2) of the Waqf Act with prayer for quashing of order dated 20.12.2023 and the order dated 21/27.03.2018 passed by the Chief Executive Officer of the Board by which the opposite parties have been directed to open the locks of two rooms which are stated as property of Waqf Estate No.726 and to restore over possession of the said rooms to the opposite parties from which they were dispossessed in pursuance of the said order of the Board and its Chairman and C.E.O.

6. The petitioner filed preliminary objection over maintainability of Miscellaneous Case No.16 of 2022 on the ground that the miscellaneous case has not been filed in accordance with order dated 18.07.2019 passed in L.P.A. No.1026 of 2018. The learned Tribunal vide impugned order dated 17.08.2022 rejected the preliminary objection filed by the petitioner.

7. Learned counsel for the petitioner has submitted that the Tribunal has wrongly interpreted the order dated 18.07.2019 passed in L.P.A. No.1026 of 2018 by the Division Bench of this Court in which all the orders have been merged and shall

prevail. He has further submitted that the prayers in Title Suit No.04 of 2019 and Miscellaneous Case No.16 of 2022 are not identical.

8. On the other hand, learned counsel for the opposite parties has submitted that the learned Tribunal has passed the impugned order, which is a reasoned order, considering all these facts and circumstances of the case and the same is not required to be interfered by this Court in its revisional jurisdiction. He has further submitted that the learned Tribunal rightly observed that the opposite parties by filing a Miscellaneous Case No.16 of 2022 have not committed any illegality in selecting the appropriate forum for their remedy in accordance with law as well as in view of the orders of this Court passed in this regard.

9. Having heard learned counsels for the parties and considering the material on record, it appears that by a detailed order dated 17.08.2022 the Bihar State Waqf Tribunal, Patna observed that the opposite parties have not committed any illegality in selecting the appropriate forum for their remedy in accordance with law and in view of the orders of this Court passed in this regard. The Tribunal has considered the material on record and the order passed by this Court in C.W.J.C. No.5368 of 2014 and C.W.J.C. No.10760 of 2018 followed by L.P.A. No.1026 of 2018 wherein it was observed that the remedy lies before the Tribunal and the liberty was granted to the opposite parties to approach the Tribunal in accordance with law. The Tribunal, by the impugned order in view of the facts and circumstances, rightly condoned the delay in filing the petition. It appears that the Single Judge as well as Division Bench of this Court in C.W.J.C. No.10760 of 2018 and L.P.A. No.1026 of 2018 clearly observed that the Tribunal is the appropriate forum.

10. In the result, this Court finds that the impugned order of the learned Tribunal is a reasoned order and in accordance with law and does not suffer from any infirmity, illegality or perversity. It does not require any interference by this Court in its revisional jurisdiction. There is no merit in this revision application.

11. This Civil Revision Application is, accordingly, dismissed. There shall be no order as to cost.

12. It is, however, made clear that this Court has not given any finding on merit of the case and the Tribunal shall adjudicate the miscellaneous case expeditiously in accordance with law without being prejudiced by the present judgment/order.