

Gopal Sah and anr. Vs. Bihar State Sunni Waqf Board and ors.

Gopal Sah and anr. Vs. Bihar State Sunni Waqf Board and ors.

SooperKanoon Citation : sooperkanoon.com/138452

Court : Patna

Decided On : Feb-20-2007

Judge : Navaniti Prasad Singh, J.

Acts : Waqf Act - Sections 54 and 55

Appeal No. : CWJC No. 4258 of 2006

Appellant : Gopal Sah and anr.

Respondent : Bihar State Sunni Waqf Board and ors.

Advocate for Def. : Sadat Ali Khan, Adv. for Respondents No. 2 and 3 and Khatim Raza, Adv. for Respondents No. 6 and 7

Advocate for Pet/Ap. : S.B. K. Manglam, Adv.

Disposition : Application allowed

Judgement :

Navaniti Prasad Singh, J.

1. The petitioners claimed to be tenants in a property under the control of the Anjuman Islamia Waqf Estate No. 344, Katihar. The present writ application has been filed initially for a direction to the respondent-Waqf Board to conclude the proceedings under Section 54 of the Waqf Act at an early date. During the

pendency of the writ application, the petitioners found that notices were issued to the Subdivisional Officer, Katihar for evicting the petitioners in terms of Section 55 of the said Act and, as such, by amendment application being I A No. 4935 of 2004, had challenged this notice on the ground that without there being an order passed after adjudication as contemplated under Section 54 of the Act, no order seeking eviction through the State authorities under Section 55 of the Act can be passed. On behalf of respondent-Waqf Board, an objection was taken that the petitioners had earlier come to this Court and this Court having dismissed their writ application, the present writ application is not maintainable. On behalf of respondent-Mutawali, it is urged that the petitioners are trespassers and are hindering development work of Musafirkhana which has to be undertaken. He adopts the argument of the learned Counsel for the respondent-Waqf Board. Parties have filed counter affidavit and the matter has been heard and with the consent of parties, this writ application is being disposed of at the stage of admission itself.

2. In the earlier writ application, the petitioners had challenged notice initiating proceedings under Section 54 of the Waqf Act. That was by filing a writ application being CWJC No. 3329 of 2005 which was ultimately disposed of by order dated 28.02.2006 wherein this Court declined to grant any indulgence to the petitioners based on the documents produced by it. The effect was that the petitioners' challenge to notice initiating proceedings failed. This does not, however, in the opinion of this Court, mean that the proceedings got concluded by this order of the Court. The only thing that happened was that the challenge for initiation of proceedings failed. Under Section 54 of the Waqf Act, statutory duty is cast on Waqf Board to hear parties and take a decision. Such a statutory responsibility has been cast by the legislature on the Waqf Board. This duty has to be exercised by the Waqf Board and the Waqf Board alone. The grievance of the petitioners in the present writ application is that without concluding the proceedings as initiated under Section 54 of the Act, the impugned notice has been issued to the Subdivisional Officer, Katihar as contemplated under Section 55 of the Act. This is impermissible.

3. Having examined the matter and hearing the parties, I am of the view that the notice that is challenged in this second writ application issued with reference to Section 55 of the Act is conditioned upon and dependent upon a statutory adjudication to be made with respect to Section 54 of the Act by the Waqf Board. Section 55 is nothing but an execution of the order passed in terms of Section 54 of the Act. In absence of the order under Section 54 of the Act, the jurisdiction to direct under Section 55 of the Act does not arise as it is consequential to and dependent on an order passed under Section 54 of the Act after due adjudication in the matter.

4. Therefore, I have no option but to quash the impugned notice, as contained in Annexure-15, with a direction to the Waqf Board to pass a final order as enjoined upon it to do under Section 54 of the Act and then proceed in accordance with law.

5. This writ application is, accordingly, allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com