

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.795 of 2025

In

CIVIL REVISION No.112 of 2025

National Highways Authority of India through Project Director PIU Patna
With its office at Project Implementation Unit, Patna, Shivpuram, Sainik
Colony, Near Hanuman Mandir, Gola Road, Danapur, Patna- 801503.

... .. Appellant/s

Versus

1. Syed Mohammad Masood Jawed S/o Late Md. Abul Kalam Near Masjid, resident of village- Shahpur Baghauni, Police Station- Vani, District- Samastipur.
2. Md. Zafar Ahsan, S/o Late Md. Yusuf R/o Ward No.- 2, village- Shahpur Baghauni, Police Station- Vani, District- Samastipur.
3. Md. Shahzad Ahmad, S/o Late Md. Sadul Hassan at P.O.- Razwa, Police Station- NH Bangda, District- Samastipur.
4. The Bihar State Sunni Waqf Board, through its Chief Executive Officer, 34, Haj Bhawan, Harding Road, Patna.
5. The Chairman, the Bihar State Sunni Waqf Board, Haj Bhawan, Harding Road, Patna.
6. The Chief Executive Officer, The Bihar State Sunni Waqf Board through its Chairman, Haj Bhawan, 34, Harding Road, Patna.
7. The District Magistrate, Samastipur.
8. The Land Acquisition Officer, Samastipur.
9. The Circle Officer, Anchal Office, Tajpur Block, District- Samastipur.
10. The Union of India, x
11. Md. Sattar Perwaiz X X

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Maurya Vijay Chandra, Advocate Mr. Gaurav Govinda, Advocate Ms. Preety Ranjan, Advocate Mr. Om Sandliya, Advocate Mr. Barun Jha, Advocate
For the Union of India	:	Mr. Ram Tujabh Singh, CGC
For the State	:	Mr. Vivek Prasad, GP-7 Mr. Sanjayy Kumar, AC to GP-7 Ms. Roona, AC to GP-7
For Respondent Nos. 4 to 6:	:	Mr. Md. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date: 17-03-2026

1. The instant Miscellaneous Appeal under Section



83(9) of the Waqf Act, 1995, read with the Waqf (Amendment) Act, 2025 and Section 151 of the Code of Civil Procedure, 1908, challenges an order, dated 15th of May, 2025, passed by the Bihar State Waqf Tribunal, Patna in Miscellaneous Case No. 24 of 2022, whereby and whereunder, the learned Presiding Officer of the Waqf Tribunal passed an order of injunction, restraining the National Highways Authority of India (hereinafter referred to “NHAI” for short) from carrying out any construction of national highway on Plot Nos. 2886 (Kabristan), 3092 (Kabristan), 2963 (Masjid) in Shahpur Baghanui Mauza and Plot Nos. 2502(Masjid), 2504 (Kabristan) of Mohiuddinpur Rajwa Mauza in the district of Samastipur on the following questions of law:

(a) Before acquisition of the above numbered plots in question by the NHAI, no notice was served upon the Waqf Board as contemplated under Section 91 of the Waqf Act or Section 9(3) and 10 of the Land Acquisition Act;

(b) The acquisition in question is contrary to the instructions issued by the Government of India in Manual of 2018 as well as against the provisions of the Waqf Act, 1995; and

(c) National Highway



Authorities Act and the procedure of acquisition of land laid down in the said Act is not applicable in case of acquisition of land being the Waqf property. So the entire acquisition and subsequent action on the part of the respondents are illegal, without jurisdiction and violative of the provisions of the Waqf Act.

2. Upon an application filed by the Private Respondent, the Bihar State Waqf Tribunal passed the following order in Miscellaneous Case No. 24 of 2022 on 15th of May, 2025: -

“The land acquisition process in respect of Plot Nos. 2886 (Kabristan), 3092 (Kabristan), 2963 (Masjid) in Shahpur Baghanui Mauza and Plot Nos. 2502 (Masjid) and 2504 (Kabristan) of Mohiuddinpur Rajwa Mauza in the district of Samastipur is not in accordance with law and, therefore, construction activity being carried out by the NHAI is stayed. It is also clarified that the order of Stay is only operational on the above-mentioned lands and operation of land belonging to those Khesras, which are related to Masjid and/or Kabristan.”



3. The Tribunal also directed the DLAO and the District Magistrate to take all endeavours, following the provisions of Waqf Act, while acquiring any Waqf property and inform the Tribunal, so that order of stay may be vacated on the construction work.

4. The contesting Private Respondents took part in the argument of the instant Appeal.

5, This Court has heard the learned counsels for the appellant as well as the Waqf Board and the Private Respondents.

6. The learned Advocate for the appellant, at the outset, refers to the provisions, contained in Section 83 of the Waqf Act, 1995, which deals with the constitution and jurisdiction of Tribunals. Section 83 of the said Act runs thus: -

83. Constitution of Tribunals, etc.— (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such



Tribunals.

(2) Any mutawalli person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf.

(3) Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State



Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

(4)Every Tribunal shall consist of—

(a)one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b)one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional



District Magistrate, Member;

(c)one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4-A)The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.

(5)The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6)Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7)The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.



(8)The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9)No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

7. It is urged by the learned Advocate appearing on behalf of the appellant that Waqf Tribunal is constituted by the State Government for determination of any dispute, question or other matters relating to Waqf or Waqf property, eviction of a tenant or determination of rights and obligations of the lesser and lessee of such property. Sub-section (2) of Section 83



empowers a Mutawalli to make an application to the Tribunal for determination of any dispute, question or other matters relating to the Waqf.

8. It is contended on behalf of the appellant that subsection (1) of Section 83 of the Waqf Act does not authorize any Mutawalli or any person interested in Waqf property to raise any dispute with regard to acquisition of any land belonging to the Waqf Board. Moreover, National Highways Act is a self-contained Act, empowering the concerned authorities to acquire land of any description for public purpose, namely, construction of national highways. Construction of national highways does not only create better conveyance facility throughout the country, but it integrates the entire country by roadways. Therefore, no question can be raised against the acquisition of national highway.

9. It is of course pointed out by the learned Advocate for the appellant that Section 91 of the Waqf Act, 1995 lays down a procedure regarding acquisition of land belonging to Waqf Board under Act 1 of 1894. The said provision does not debar the acquiring authority from acquisition of land under the Land Acquisition Act, 1894 or under any law for the time being in force relating to acquisition of the land or other property. It



only states that in course of the proceeding under Act 1 of 1894 or under any law for the time being in force relating to acquisition of any land or any other property belonging to Waqf, the Collector shall serve a notice of acquisition of such land to enable the Board to appear within three months from the date of receipt of such notice. Thus, the Collector is under obligation to send a notice to the Waqf Board before an Award is made. In other words, Section 91 does not prohibit acquisition of Waqf land but it gives right to the Members of the Board or the person interested of Waqf property to report themselves in respect of the amount of Award against acquisition within a period of three months from the date of receipt of the notice.

10. The learned Advocate on behalf of the appellant further submits that Section 3-A to 3-H of the National Highways Act, 1956 cull out a detailed provision regarding acquisition of land for the purpose of construction of national highways. Section 3-A empowers the Central Government to notify any land for public purpose, viz., for the building, maintenance, management or operation of a national highway or part thereof. According to Section 3-B, on issuance of such notification under Section 3-A (1), any person authorized by the Central Government shall make any inspection, survey,



measurement, valuation or enquiry; take levels; dig or bore into sub-soil; set out boundaries and intended lines of work; mark such levels, boundaries and lines by placing marks and cutting trenches; or do so such other acts or things as may be laid down by rules made in this behalf by that Government. Section 3-C provides that any person interested in any such land notified for acquisition may file an objection within 21 days from the date of publication of the notification before the competent authority and the competent authority shall dispose of such objection after giving the petitioner an opportunity of being heard. On disposal of such objection, declaration of acquisition is to be made under Section 3-D of the Act. Such declaration shall follow the power of taking over possession by the Central Government under Section 3-E of the Act. After taking over possession, the land vests in the Central Government and the authorized person(s) shall have the right to enter into the land. This follows the determination of amount of compensation under Section 3-G of the National Highways Act, 1956. Section 3-H of the Act provides for deposit and payment of compensation. Thus, like that of Waqf Act, 1995, the National Highways Act, 1956 does not create any such provision for the person(s) interested in the Waqf property to file an objection within three months from the



date of service of notice by the Collector of the district.

11. Therefore, it is submitted by the learned Advocate on behalf of the appellant that the impugned order was passed without jurisdiction and the same is liable to be set aside.

12. The learned Advocate on behalf of the Waqf Board, on the other hand, refers to Section 51 of the Waqf Act, 1995. Section 51 relates to alienation of Waqf property without sanction of the Board. The Section says that such alienation is void.

13. It is contended by the learned Advocate appearing on behalf of the respondent-Waqf Board that the principle laid down under Section 51 is applicable to the acquisition of land. He also submits that Section 52 of Waqf Act, 1995 empowers the Board to recover Waqf property, transferred in contravention of Section 51 of the Waqf Act.

14. According to the learned Advocate for the Waqf Board, the acquisition of Waqf property is a form of alienation of the property from the ownership of Board to the ownership of the State or Central Government. Such alienation is void and no Waqf property can be acquired.

16. It is also contended by the learned Advocate



appearing for the Waqf Board that Section 83 speaks about “determination of any dispute” in the case, the dispute between the parties relate to determination of an acquisition as to whether the proposed national highway can be diverted about 200 mtrs. away from the existing site where there is huge quantity of vacant land. This dispute comes within the jurisdiction and the Tribunal rightly entertained the application filed by the Respondents and passed an order of injunction.

17. It is also submitted by the learned Advocate for the Board that the provision of Section 91 will be applicable *mutatis mutandis* in respect of the acquisition under the National Highways Act, 1956. Therefore, without following the legal provisions, the Central Government or the Collector through the Central Government cannot acquire Waqf property.

18. The Private Respondents have also adopted the same submission.

19. On the last date of argument, the learned Advocate for the appellant submits a web copy of the order, dated 26th of February, 2026, passed in C.W.J.C. No. 3020 of 2022 (Vikas Kumar v. The Union of India & Ors.). It is observed in paragraph 5 of the said order as follows: -

“5. *The order under challenge*



before the Bihar Waqf Board Tribunal, relates to five of the plots bearing Khesra Nos. 2886, 3092, 2502, 2504 and 2963 situated in village Mohiuddinpur Rajwa and Shahpur Baghauni, however, in view of the stay order passed by this Court today in C.W.J.C. No. 3340 of 2026, now there is no restriction for the NHAI to carry out the order. “

20. The learned Advocate on behalf of the appellant also refers to a judgement passed by the Division Bench of this Court in C.W.J.C. No. 2218 of 2023 (Haji Md. Riyazuddin @ Mahammad Riyajuddin v. The Union of India & Ors.), on 6th of April, 2023, where a public spirited person (petitioner) challenged an order of demolition of an old historical Mazaar of Zinda Shah Saheed Baba, situated at Kayamnagar, Bhojpur on the four-lane of National Highway No. 30 and 84, connecting Koilwar to Bhojpur. In paragraph nos. 9 and 10 of the said judgement, the Hon'ble Division Bench decided as follows: -

“9. In the aforementioned writ petition, this Court had also taken note of structures/ religious structures and has been pleased to observe as follows:

“We also notice that there are 14 structures which are required to be removed in the District of Buxar. We



direct the District Magistrate, Buxar to forthwith take steps for removal of the same. Structures of religious places have to be removed more so in the light of the orders passed by Hon'ble the Apex Court in Special Leave to Appeal (Civil) No(s). 8519/2006, titled as Union of India Vs. State of Gujarat & Ors. [Orders dated 29.09.2009 and 31.01.2018]. The District Administration shall do this by also associating the local populace, lending the requisite sensitivity in the matter, but in all circumstances, such structures shall be removed.”

10. It would be also relevant to observe that in the light of the orders passed in SLP (C) No. 8519 of 2006 (Union of India Vs. State of Gujarat and Ors.) in exercise of powers conferred under Article 136 of the Constitution framed the Rules titled as “Bihar unauthorized religious structures, construction, survey and its regularization, relocation and removal Rules, 2013”. Even as per the aforesaid Rule no religious structure situated at public place could be regularized, which causes hindrance in smooth trafficking in any of the manner. As per the orders of this Court, the Administration has



attempted to arrive at an amicable solution by convening a meeting of the local populous; who were unrelenting the options put forth by the petitioner being not feasible, the construction of the road cannot be further delayed.”

21. Thus, the Division Bench, presided over by Hon'ble the Chief Justice, vide order, dated 26th of February, 2026 has already held that there is no predicament or hindrance in proceeding with the work on the plots in question involved in the instant Appeal. This observation practically nullifies the impugned order of injunction passed by the Chairman, Waqf Tribunal, Patna.

22. The learned Tribunal failed to consider that the National Highways Act, 1956 has been held to be a complete code in itself for the purpose of acquisition of land for the national highways.

23. In this regard, the decision in ***National Highways Authority of India v. Sayedabad Tea Company Limited & Ors.***, reported in ***(2020) 15 SCC 161*** may be relied on.

24. The learned Tribunal failed to consider two Central Legislations, viz., National Highways Act, 1956 and Waqf Act, 1995, subsequently notified as the Unified Waqf



Management, Empowerment, Efficiency and Development Act, 1995 have to be construed harmoniously and in the event of any conflict, the National Highways Act, 1956, shall prevail, as qua the construction of national highways, the legislation under Entry 23 of List-I of the Schedule-VII of the Constitution occupied the field prior to the enactment of the Waqf Act, 1995 and therefore, the latter legislation under Entry 28 of List-III of Schedule-VII shall give way. In any event, the objects of the Waqf Act, 1995 make it clear that the Waqf Act is enacted to provide for the better administration of Waqf properties. Further, the entire scheme of the Waqf Act, 1995 demonstrate that the Act contemplates to govern the aspects relating to dedication, lease, sale, gift, mortgage, exchange or transfer of Waqf property. The relevant provisions are stated in Sections 6, 7 and 51 of the Waqf Act. In this regard, the decision, reported in *Ashoka Marketing Ltd. v. Punjab National Bank*, reported in *(1990) 4 SCC 406* may be relied on.

25. This Court has duly considered the provisions of both the Acts as well as the judgements passed by this Court and the Hon'ble Apex Court and find that the learned Tribunal is absolutely without jurisdiction in passing the impugned of injunction.



26. Practically the Tribunal failed to appreciate the law and in my view what matter most in the mind of the learned Chairman of the Waqf Tribunal is the interest of a particular community. This is not acceptable for a Member of Bihar Judicial Service. This observation be brought to the notice of the Hon'ble the Chief Justice.

27. For the reasons stated above, the instant appeal is allowed.

28. The impugned order, dated 15th of May, 2025, passed by the Bihar State Waqf Tribunal, Patna in Miscellaneous Case No. 24 of 2022, is hereby set aside.

29. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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