

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11653 of 2014

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1. Islahul Muselmin Committee through its Secretary Md. Faiz Ahmad son of late Latif Ansari resident of Village - Pachkeshar, Police Station Karpi, District - Arwal.
 2. Md. Mustafa son of Azim Ansari resident of Village - Pachkeshar, Police Station Karpi, District - Arwal.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary to the Government, Patna, Bihar.
2. The Principal Secretary to the Government Department of Home Affairs, Government of Bihar, Patna.
3. The Principal Secretary, Department of Minority Welfare, Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police, Magadh Range, Gaya.
6. The District Magistrate, Arwal.
7. The Superintendent of Police, Arwal.
8. The Sub Divisional Officer, Arwal.
9. The Circle Officer, Arwal.
10. The Officer-in-Charge, Karpi Police Station, District - Arwal.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Roy

For the State : Mr. Anjani Kumar, AAG 6

Mr. Shailendra Kumar Singh, AC to AAG 6

For Wakf Board : Mr. Rashid Izhar

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 09-03-2015

This Public Interest Litigation is filed by the petitioners. Petitioner no.1 claims to be a Committee and petitioner no.2 is an individual with a prayer to direct the respondents herein to take various steps for protection of the grave-yard in village

Pachkeshar, police station Karpi, in the district of Arwal.

The petitioners contend that there exists about 6 acres of land which was earmarked for grave-yard for Muslims, and that in the recent past there was a serious dispute between the two communities in the village. It is stated that part of the land is being forcibly used for non-communal purpose and it gave rise to friction and violence. They plead that though the instances of encroachments have been brought to the notice of the respondents as well as the Authorities of the Police Department, no action has been taken. In this background, they seek directions of various nature.

Detailed counter affidavits have been filed on behalf of the respondents, respondent nos. 6, 8 and 9 on the one hand and respondent no.7 on the other. It is stated that there was some difference of opinion between the two communities in the village regarding the use of land and quite a large number of persons of both the communities sat together in November, 2013 and resolved their disputes duly indicating the measures to be taken and this was followed by two more meetings in January, 2014 and June, 2014. They submit that the first petitioner is a non-existing organization and the second petitioner is trying to blow up the sensitive issue by suppressing the arrangements that has been brought to existence with the consent of the two communities.

Heard Sri Rajeev Roy, learned counsel for the petitioners, Sri Anjani Kumar, learned AAG 6 representing the State, and Sri Rashid Izhar, learned counsel for the Wakf Board.

As in the case of many villages, there exist separate grave-yard in Pachkeshar village earmarked for the people belonging to different communities. The Wakf Act, 1995 provides for registration and notification of the Wakf properties whether they are

places of worship or grave-yards. The publication of list of the properties in the Gazette is to be preceded by survey as well as enquiry. The persons who feel aggrieved by notification are also provided certain remedies before the Wakf Tribunal and other fora.

The petitioners claim that the property of a particular description is grave-yard for Muslims. However, they do not state that the property has been notified under the Wakf Act. It is not known as to whether any steps are in contemplation by the Board in this behalf. Unless there is clarity as to the character of the property, it would not be possible for this Court, to give any specific direction in this behalf.

Be that as it may, the counter affidavits filed by respondent nos. 6, 8 and 9 on one hand and by respondent no.7 on the other hand, disclose that the elderly persons belonging to both the communities sat together, deliberated the issue and evolved a formula ensuring peace and tranquility in the village. We do not intend to disturb that arrangement at the instance of the one or two persons. Things would have been different altogether, if the petitioners are able to point out that the arrangement brought into existence by the residents of both the communities is opposed to any specific provisions of law. When the property itself is not notified, the Court cannot pronounce upon the legality or otherwise of the arrangement that is in existence in the village.

Now that the Wakf Board is a party before this Court, it can be required to take necessary steps as provided under the Wakf Act and the Rules thereunder. It is needless to mention that prescribed procedure must be followed before any final decision is taken in this behalf.

We, therefore, dispose of this Writ Petition leaving it open to the respondent no.11, i.e. the Sunni Wakf Board, to take all

necessary steps in relation to the grave-yard Wakf property of village Pachkeshar, police station Karpi, in the district of Arwal, in accordance with the Wakf Act, 1995.

There shall be no order as to costs.
Interlocutory Application shall stand disposed of.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

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