

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4708 of 2015

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1. Managing Committee, Yateem Khana, Anjuman Khademul Islam, Kashmiri Kothi, Patna City, Patna through its President namely Dr. Ahmad Abdul Hai son of Late Dr. Mohammad Abdul Hai, resident of Exhibition Road, Police Station Gandhi Maidan, District Patna. Office situated at Kashmir Kothi, Patna City, District Patna. Petitioner/s

Versus

1. The State of Bihar, the Principal Secretary, Minority Welfare Department, Government of Bihar, Patna.
2. The Bihar State Sunni Wakf Board, through its Chief Executive Officer, 34 Haj Bhawan, 2nd Floor, Harding Road, Patna.
3. The Administrator, Bihar State Sunni Wakf Board, 34 Haj Bhawan, 2nd Floor, Harding Road, Patna.
4. The Chief Executive Officer, Bihar State Sunni Wakf Board, 34 Haj Bhawan, 2nd Floor, Harding Road, Patna.
5. The District Magistrate, District Patna.
6. The Superintendent of Police, District Patna.
7. The Sub Divisional Officer, Patna City, District Patna.
8. The Officer-in-Charge, Khawjekalen Police Station, Patna City, District Patna. Respondent 1st set
9. Janab Mahmood Alam son of Md. Alam, Firoz Mangal Store, Nala Road, District Patna.
10. Janab Kamluzzaeffar son of Md. Wasiuddin Sharfi, New Colony, Digha, District Patna.
11. Janab Shafiuddin Ahmad, son of Late Faqrudin Ashraf, Ramna Road, District Patna.
12. Janab Syed Shah Monnawar Hassan, Naya Makan Lodi Katra, Patna City, District Patna.
13. Janab Shah Raza son of Anwar Ali Khan, Samanpura, Raza Bazar, District Patna.
14. Janab Manzar Ali son of Dr. Nazrur Rahman, Ramna Road, District Patna.
15. Janab Syed Md. Irshad Alam son of Abdul Shakoore, Shahganj, District Patna.
16. Janab Tajuddin son of Md. Haroon Rashid, Shah Ki Imli, Patna City, District Patna.
17. Janab Ibrar Raza son of Late Md. Islam, Barkat Khan Ki Akhara, District Patna.
18. Janab Naqui Ahmad son of Late Jamil Ahmad, Shah Kamal Road, Patna City, District Patna.
19. Janab Md. Ibrahim son of Anwar Hussain, Banwari Tola, Mugal Ki Jama Masjid, District Patna.

.... Respondents 2nd set

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Appearance :

For the Petitioner/s : Mr. S. Firoz Reza, Adv.
For the Respondent/s : Mr. Thakur Jai Singh, A.C. to S.C.26
For Wakf Board : Mr. Anis Akhtar, Adv.
For the private respondents: Mr. S.Jamil Akhtar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

14 09-09-2015

Mr. S. Firoz Raza learned counsel for the petitioner, learned counsel for the State, Mr. Anis Akhtar for the Wakf Board and Mr. S. Jamil Akhtar for the private respondents are in attendance and have been heard.

The petitioner is aggrieved by the order dated 24.2.2015 issued by the Bihar State Sunni Wakf Board under the signature of the Chief Executive Officer whereunder in reference to an earlier order dated 24.2.2015 of the Administrator of the Wakf Board the Managing Committee for Wakf Estate No.25 and 2525/25 has been constituted for the management of the petitioner Yateem Khana. The order is impugned at Annexure-1 to the writ petition. The petitioner questions the authority of the Wakf Board to constitute a Managing Committee for the Yateem Khana in the garb of constitution of a Managing Committee for the Wakf Estate No.25 and 2525/25 to also regulate the functioning of the Yateem Khana.

The entire issues so raised in the writ petition stands noted in the order of this Court passed on 20.5.2015 and which shall form a part of the order and is being reproduced herein below for ready reference:

“One of the core issues which arises in this matter is

even when the Yateem Khana in question is being funded partly by the Wakf Estate No.25 and 2525/25 whether that by itself would render Yateem Khana to be a part of the Wakf property or it would require a declaration to that effect by the Wakf Board under the erstwhile Wakf Act, 1947 since repealed by the Wakf Act, 1995 and the rules framed thereunder.

Whereas it is the contention of Mr. Chitranjan Sinha, learned Senior counsel for the petitioners that the two are distinct entities and even where the Yateem Khana is being funded by the Wakf Estates, that would not ipso facto make the Yateem Khana itself a Wakf property to be regulated under the Wakf Act, 1995, while it is the contention of Mr. Anis Akhtar appearing on behalf of the Wakf Board as well as Mr. Jamil Akhtar appearing for the Secretary of the newly constituted Managing Committee whose constitution is put to question in the present proceeding that there are orders to reflect that the Yateem Khana had been taken within the preview of the Wakf Act by the Board.

Admitted position is that whereas the Yateem Khana was established on 9.5.1938, Wakf Estate No.25 was created on 25.9.1940 at Purnea and Wakf Estate No.2525/25 was created under a separate deed dated 10.8.1949 at Patna meaning thereby the Wakfs in question were created subsequent to the establishment of the Yateem Khana. There is absolutely lack of pleadings to show whether since after the establishment of the Yateem Khana or the creation of the Wakf in question, at any stage of time, the Wakf Board started regulating the activities of the Yateem Khana and/ or constituted any committee to that effect rather the records on the pleadings of the writ petition manifests that first of such constitution was made by the Wakf Board in 2010 which was questioned by the petitioners in C.W.J.C.No.10948 of 2010 but since during the pendency of the writ petition, the life of the said committee itself expired, that the writ petition was disposed of accordingly without an adjudication on merits.

It is almost after 70 years of the establishment of the Yateem Khana as well as the Wakf Estates that the first of the constitution took place in the year 2010. Even if the Wakf Estates do not mention the Yateem Khana as part of the property, it does not stop the Wakf Board to bring the Yateem Khana within its regulations by exercise of powers under Sections 3(r), 6 and 40 of 'the Act' as the case may

be, but there is nothing on record of the pleadings to demonstrate as to whether any such exercise has been undertaken.

Enabling the parties to address on the issue as well as to bring on record the documents in support of their stand, let the matter come up for consideration on 29.6.2015 within top 5 cases in admission list of 2015 cases and until further orders of this Court, the operation of the office order dated 24.2.2015 impugned at Annexure-1 to the writ petition whereby the Managing Committee has been constituted to administer the works of the Yateem Khana, Anjuman Khademul Islam, Kashmiri Kothi, Patna City as well as the consequential orders passed pursuant thereto, in so far as it endeavours to regulate and interfere with the internal affairs of the Yateem Khana, shall remain stayed.”

Thereafter the matter was taken on 1.7.2015 and when this Court was informed by Mr. Anis Akhtar appearing for the Wakf Board that the issues so raised and taken note of by this Court in its order dated 20.5.2015 is in consideration before the Wakf Board who was to meet on 6.5.2015. The matter after being adjourned for one date to another, is taken up today when a supplementary counter affidavit has been filed on behalf of the Wakf Board in which it is stated that an enquiry has been initiated for inclusion of the properties of the Yateem Khana within the Wakf Estate No.25 and 2525/25. This singular statement made by the Wakf Board in the affidavit so filed today completely answers the issue that was posed by this Court in its order dated 20.5.2015 and is sufficient to allow the writ petition for in absence of any

decision by the Wakf Board under Section 3(r),(6) or 40 of the Wakf Act, 1995 to declare the Yateem Khana as a wakf, the Wakf Board had no jurisdiction to touch upon the property of the Yateem Khana in the garb of regulation of the Wakf Estate No.25 and 2525/25.

Mr. S. Firoz Raza learned counsel for the petitioner further seeks to clarify the position with regard to the establishment of the Yateem Khana to submit that although the Yateem Khana was established as back as in 1910 but it was registered subsequently on 9.5.1938 under the Societies Registration Act and the Wakf Estates in question came into existence much later thereafter.

Mr. S. Jamil Akhtar, learned counsel for the private respondents has contested the arguments and the issues advanced by the petitioner by submitting that although an enquiry has been indeed initiated by the Wakf Board but there are documents on record which would show that the Yateem Khana was part of the Wakf property and which is of the year 1917. He further submits that although the petitioner has been stressfully contending that it is registered under the Societies Registration Act but there is no document to support such contention.

Be that as it may, considering the admission of the Wakf

Board that an enquiry as regarding the inclusion of the Yateem Khana as a Wakf property has been initiated, in my opinion, until such time that the enquiry is completed and a decision is taken by the Wakf Board for declaring the Yateem Khana as a Wakf there would be no occasion by the Wakf Board to constitute a Managing Committee for regulation of the Yateem Khana.

For the reasons aforementioned the office order dated 24.2.2015 impugned at Annexure-1 issued by the Chief Executive Officer, Bihar State Sunni Wakf Board cannot be upheld and is accordingly set aside.

The writ petition is allowed. The consequences shall follow.

(Jyoti Saran, J)

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