

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11604 of 2016

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1. Anjuman Ittehad Qubristan Committee Chewara, P.S. - Chewara, District - Sheikhpora through it's President.
 2. Abdul Qayum S/o Md. Suleman Resident of Village - Chewara, P.S. - Chewara, District - Sheikhpora, President Anjuman Ittehad Qabristan Committee, Chewara, P.S. Chewara, District - Sheikhpora.
 3. Abdul Rauf S/o - Late Md. Nizam Resident of Village - Chewara, P.S. - Chewara, District - Sheikhpora, President Anjuman Ittehad Qabristan Committee, Chewara, P.S. Chewara, District - Sheikhpora.

.... Petitioner/s

Versus

1. The State of Bihar, through Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Revenue & Land Reforms Department, Government of Bihar, Patna.
4. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
5. The Commissioner, Munger Division, Munger.
6. The District Collector-cum-District Magistrate, Sheikhpora, District - Sheikhpora.
7. The Sub-Divisional Officer, Sheikhpora, District - Sheikhpora.
8. The Circle Officer, Chewara, P.S. - Chewara, District - Sheikhpora.
9. The Block Development Officer, Chewara, P.S. - Chewara, District - Sheikhpora.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Prasad Singh, Advocate.
For the State : Mrs. Shilpa Singh, GA 12.
: Mr. Sunil Kumar, AC to GA 12.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-10-2016

Heard Mr. Devendra Prasad Singh, learned Counsel for
the petitioners, and Mrs. Shilpa Singh, learned Government
Advocate No. 12 for the State- respondents.



By means of this writ petition, made under Article 226 of the Constitution of India, in the nature of Public Interest Litigation, the petitioner has sought for issuance of an appropriate writ to remove the encroachment that has taken place on the land, which forms the subject matter of this writ petition and is being presently used as a place for burial.

By filing counter affidavit, the State respondents have undertaken to remove the encroachment within a period of five months from the date of filing of the counter affidavit.

As regards the burial of the children of the nut community on the said ground, it is the stand of the State respondent that such practice had been in vogue since long.

In view of the fact that the right to use the land, in question, purely and exclusively by the Muslim Community and not by the Nut Community for burial of their children, is a disputed question of fact, which would require evidence by holding a roving enquiry, we are of the view that the issue, as to whether the land shall be allowed to be used or not by the members of the Muslim community exclusively for the purpose of their burial ground, is the question, which can be decided in an appropriate proceedings.

Therefore, in the interest of justice, respondent No. 6, namely, the District Collector-cum-District Magistrate, Sheikhpura, is hereby directed to ensure that the encroachments are removed in terms of the undertakings given by the respondents within a period of five months from today.

However, as far as the practice of the Nut Community to bury their children on the said land is concerned, we make it clear that, in this respect, we express indefinite opinion and, therefore, it would remain open to the petitioner, or the persons similarly situated as the petitioners are, to institute appropriate suit in a civil Court of competent jurisdiction for necessary relief of declaration of their rights and/or injunction, if any.

With the above observation, this application stands disposed of.

(I. A. Ansari, CJ)

(Dr. Ravi Ranjan, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.10.2016
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