

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.648 of 2016

=====

Md. Saddam Hussain Son of Md. Habibur Rahman, Shop at Aranda Wakf Estate
No. 482 Kotwali Patna, resident of Mohalla- Kamla Nehru Nagar, Police Station-
Kotwali, District- Patna.

.... Petitioner

Versus

1. The Chairman Bihar Sunni Wakf Board Haj Bhawan, Patna
2. The Secretary Bihar Sunni Wakf Board Haj Bhawan.
3. The Chief Executive Officer Bihar Sunni Wakf Board, Patna

.... Respondents

=====

Appearance :

For the Petitioner : M/s Mahendra Lal Jayaswal and
Raju Kumar, Advocates
For the State : Mr. J.G. Khan, AC to SC 7
For the Sunni Wakf Board: Mr. Rashid Izhar, Advocate

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 11-05-2016

I.A. No. 3908 of 2016

This Interlocutory Application has been filed for amendment of the writ petition by introduction of another relief, which stands stated in paragraph no. 1 as the petitioner seeks quashing of memo no. 57 dated 22.01.2016 passed by the Sub Divisional Officer, Patna, contained in Annexure 3, by which he has been directed to vacate the shop no. 482.

It appears from the record that the writ petition was filed on 11th of January, 2016 and during the pendency of the writ petition, the aforesaid notice has been issued upon the petitioner.

Accordingly, this Interlocutory Application stands allowed.

The relief mentioned in paragraph no. 1 and the averment made in support thereof in the Interlocutory Application would form part of the writ petition.

C.W.J.C. No. 648 of 2016

Heard the parties.

The sole ground raised by the petitioner in the writ petition is that the action of Sunni Wakf Board as well as the Sub Divisional Officer, Patna issuing of the impugned notice is against the mandate of the provisions of amended section 54 of the Wakf Act, 1995(hereinafter to be referred to as “the Act”), which requires that if encroacher is required to be removed then such application should be filed before the Tribunal and the order would be passed by the Tribunal after hearing the encroacher and then only, a direction can be issued by the Executive Officer.

Thus, in my view, on such ground the impugned notice as contained in Annexure 3 is not sustainable and, accordingly, the same is quashed.

Learned counsel appearing for the respondent Sunni Wakf Board has informed that a notice has already been issued by the Executive Officer of the Wakf Board to the petitioner for such purpose and, as such, in my view, this Court is not required to go into the issue that the petitioner is a *bona fide* tenant or encroacher

as the issue is to be decided by the competent authority.

Accordingly, this writ application is allowed to the extent as indicated above and the petitioner would be required to immediately respond to the notice. The petitioner would not be required to wait for its service rather he would be required to approach the authority concerned which would hand over the same if the notice has not been received or served upon him. The petitioner would be required to file reply to the same so that a final decision could be taken by the Tribunal.

(Dr. Ravi Ranjan, J)

SC/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.06.2016
Transmission Date	NA