

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7203 of 2014

=====

Niranjan Das son of Late Ram Chandar Ram Resident of Mauza - Karimabad @
Magardahi in Town Samastipur Ward No. 6, P.S. and District - Samastipur.

.... Petitioner/s

Versus

1. Khalilur Rahman, Mutawalli cum-Secretary, Gudari Masjid, Samastipur, Wakf
No. 566, Ward No. 6, P.S. and District - Samastipur.
2. Bihar State Sunni Wakf Board, Hazi Bhawan, Harding Road, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Yogendra Prasad Singh with Mr. Shambhu Sharan Singh, Advocates
For the BSSWB	:	Mr. Md. Helal Ahma with Mr. Vikash Kumar Shukla, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 01-09-2017

Heard learned counsel for the petitioner and Bihar State
Sunni Wakf Board (hereinafter referred to as the 'Board').

2. The petitioner has moved the Court for the following
reliefs:

*“ 1. That the present application is being filed
against the order dated 26.11.2013 passed in Title
Eviction Case No. 20/2010 by the Bihar Wakf
Tribunal, Patna being defendant. The petitioner
filed a petition on 24.12.2012 under Section-83 of
the Wakf Act, 1995 to dismiss the suit with cost
which are as:*

(i) That the plaintiff filed the suit with the relief a



decree for eviction of the defendant from the suit premises as mentioned in Schedule-1 of the plaint on the ground of personal necessity of the plaintiff no. 1 as envisage u/s 11(c) of the Bihar Building (lease, rent and eviction) Control Act, 1992 directing the defendant to vacate the suit premises within time specified by the court and hand over possession thereof to the plaintiffs and on failure to do so by the defendant to be evicted their from by the process of the court with another prayer the defendant be directed to deposit the arrears as well as the current rent of the premises and cost of suit be award to the plaintiff.

- (ii) *That the plaintiff prepared a case that Most. Jumratan @ Sonwarti w/o late Dildar Ussain @ Karaila Mian resident of Mohalla Thana and Sub-Division-Samastipur old District Darbhanga had settle and donated a piece and parcel of the land with constructed house over the same measuring an area of 14 ½ dhur with all fitting and ficture situated at karimabad @ magardahi town Samastipur of District bearing Plot No. 4428, Tauzi Thana No.139, Ward No. 06, Holding no. 123, New, 166 old by executing a registered of Wakf dated 09.02.1950 as described in Schedul-1 of the plaint.*
- (iii) *That rear partition of the said house*



measuring area 705 dhurs containing two room, varamda, bath room, a kitchen was inducted to this defendant namely Niranjan Das the year 1995 for the rent Rs. 100.00 and written deed of lease executed by Khalilur Rahman (plaintiff no. 1) the mutwalli at Gudari Masjid and Niranjan Das under Deed of unregistered written lease deed dated 3.9.1995 for a fix period of three years which commence from 30.09.1995 was expired on 2.9.1998 since the lease was unregistered one in law it was monthly lease tenancy.

- (iv) That no fresh deed of agreement of lease executed after 2.9.98 the defendant was allowed to continue as tenant on payment of monthly rent of Rs. 100.00 for the said premises as per Schedule-1 in which the defendant is living with a family members.*
- (v) That the defendant paid the rent for the month of December, 2007 thereafter he stopped paying rent of suit premises and because defaulter from 2008 and made liable eviction being continues defaulter from more than two months.*
- (vi) That the defendant appeared in the suit and filed his written statement and denied the tenancy of the plaintiff no. 1 as the plaintiff and defendant has no relationship with a tenant and landlord of the Schedule No. 1*



property.”

3. Learned counsel for the petitioner submitted that he would not be required to go into facts for the reason that the order impugned is nonest in the eyes of law as it has been passed by one man in the capacity of the Bihar Wakf Tribunal (hereinafter referred to as the ‘Tribunal’), though as on that day, in view of amendment to Section 83 of the Wakf Act, 1995, the constitution of the Tribunal was of three persons. Learned counsel submitted that the same not being followed, the order itself has no sanctity in the eyes of law and is required to be set aside.

4. Learned counsel for the Board submitted that it was due to the petitioner himself who was not pressing his application, the same came to be disposed off and thus the writ petition itself is not maintainable as he was required to move before the Tribunal once again. However, with regard to the contention of learned counsel for the petitioner on law relating to the order impugned being passed without jurisdiction, learned counsel is not in a position to defend the order.

5. Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the position in law is that with effect from 23.09.2013, when the Wakf (Amendment) Act, 2013, (hereinafter referred to as the ‘Act’) came to be notified in



the gazette of India having received the assent of the President of India, the Tribunal has to consist of three persons. Admittedly, the order impugned has been passed only by one person. There being no provision in the Act with regard to any quorum or one person also being a legal quorum for deciding issues, the Court has no option but to quash the order impugned dated 26.11.2013 in Title Eviction Suit No. 20 of 2010 passed by the Tribunal.

6. Having done so, the objection filed by the petitioner automatically gets revived. The petitioner shall appear before the Tribunal on the next date fixed and thereafter the Tribunal shall fix the date of hearing when the petitioner shall be at liberty to press the application filed by him. Thereafter, the Tribunal shall pass a reasoned order within two months from the next date fixed in the case. If the petitioner fails to press the application or cooperate, the Tribunal shall proceed *ex parte* without giving any further indulgence to him.

7. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	

