

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10171 of 2016

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1. Md. Jamil Akhtar son of Md. Majhar Mian, Resident of Khanka, P.S.-
Biharsharif, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Minority Welfare Department, Government of Bihar, Patna.
4. The District Magistrate-cum- Permanent Member of Soghra Waqf Estate, Nalanda at Biharsharif.
5. The Sub-Divisional Officer, Nalanda, Biharsharif.
6. The Chief Executive Officer, Bihar State Sunni Wakf Board at Haz Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Surendar Singh, Advocate Mr. Kamaluddin, Advocate Mr. Shashi Kumar, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, PAAG-1 Mr. Sita Ram Yadav, GP-16
For Waqf Board		Mr. Md. Anis Akhtar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-04-2017

The matter was taken up yesterday and during the course of hearing, finding certain aspects of the matter to be dealt with by the State Government, we had requested Shri Lalit Kishore, learned Principal Additional Advocate General-1, to look into the matter, seek instructions and assist us in disposal of the matter.

2. He has gone through the matter and we have heard



him in detail today and based on the submissions made by Shri Kishore and after considering various aspects of the matter, we propose to dispose of this Public Interest Litigation in the following manner:

3. Petitioner has filed this petition in public interest and the grievance of the petitioner pertains to management of Soghra Waqf Estate situated in district Nalanda at Biharsharif. Primarily, the grievance of the petitioner is that with regard to the activities of the Mutwalli and various illegalities said to have been committed by him an enquiry was conducted by the Sub-divisional Officer, Biharsharif. The Sub-divisional Officer submitted his report finding substance in the allegations made with regard to activities of the Mutwalli and thereafter the matter was placed before the Waqf Board, but when the Board did not take any action and when representations made to the District Magistrate, a permanent member of the Estate also failed, this petition was filed and, primarily, the grievance is that the report of the Sub-divisional Officer be given effect to and the present Mutwalli be removed from the office and further action be taken for constitution of the committee in accordance with law.

4. The Waqf Board has filed a detailed reply. In the reply the Waqf Board, respondent No.6, says that they are seized of



the matter and are taking corrective measures in the light of the report submitted by the Sub-divisional Officer. However, the petitioner makes a serious complaint that the Board is sitting tight over the matter and they are protecting the interest of the present Mutwalli.

5. Be that as it may, when yesterday we found that the Board is not taking any action promptly, we had requested Shri Kishore to assist and today during the course of hearing Shri Kishore invites our attention to the powers available to the State Government under Section 66 of the Waqf Act, 1995 which reads as under:

“66. Powers of appointment and removal of mutawalli when to be exercised by the State Government.—Whenever a deed of 1 [waqf] or any decree or order of a court of any scheme of management of any 1 [waqf] provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the 1 [waqf], then, notwithstanding anything contained in such deed of 1 [waqf], decree, order or scheme, such powers aforesaid shall be exercisable by the State Government: Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.”

He also invites our attention to an order passed by the competent department on 16.1.2017 and on analysis of the submissions made



by Shri Kishore, we find that the matter is before the State Government, certain persons have objected to the report of the Sub-divisional Officer and it is their contention that the report cannot be accepted.

6. Be that as it may, under Section 66 of the Waqf Act, power is available to the State Government for removal of a Mutwalli on certain conditions and once the State Government is seized of the matter and the report is also under consideration before the State Government and the communication dated 16.1.2016 produced before us goes to indicate that taking note of the totality of the circumstances the State Government has already referred the matter to a high powered Committee for scrutinizing the report and submitting a report to the State Government, we are satisfied that interest of justice would be met in case the State Government is directed to execute or utilize its power under Section 66 of the Waqf Act, complete the process for seeking recommendation from the higher authorities and based on the recommendation made, after hearing all concerned, take a decision with regard to the action to be taken on the recommendation of the authorities, preferably within a period of three months from the date of receipt/production of a certified copy of this order.

7. Needless to emphasize that any decision taken by



the State Government shall be subject to grievance that may be made by any aggrieved person in the matter.

8. With the aforesaid, this petition is disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.4.2017
Transmission Date	N/A

