

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20084 of 2013

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1. Gopal Sah S/O Late Jang Bahadur Sah Resident Of Mohalla - Larkaniya Tola, P.O. + P.S. Katihar, District - Katihar
 2. Md. Shamsuddin S/O Late Liyakat Mian Resident Of Mohalla - Rampara, P.O. + P.S. Katihar, District - Katihar

.... Petitioner/s

Versus

1. The Bihar State Sunni Waqf Board, Haj Bhawan, 34, Hardinge Road, Patna through the Secretary
2. The Chairman, The Bihar Sunni Waqf Board, Haj Bhawan, 34, Hardinge Road, Patna
3. The Secretary - Cum - Chief Executive Officer, The Bihar Sunni Waqf Board, Haj Bhawan, 34, Hardinge Road, Patna
4. The District Sunni Waqf Board, Katihar Through The Chairman, Mohalla - Fakirtakia, P.O. + P.S. + District - Katihar
5. The Secretary, The District Sunni Waqf Board, Mohalla - Fakirtakia, P.O. + P.S. + District - Katihar Through The Chairman
6. The Anjuman Islamia, Waqf Estate No. 344, Katihar, Mangal Bazaar, P.O. + P.S. + District - Katihar through the Chairman
7. Shri Shakil Ahmed @ Bablu S/O Abdul Samad Resident Of Mohalla - Amla Tola, P.O. + P.S. + District - Katihar, Presently The Secretary, Anjuman Islamia, Waqf Estate No. 344, Katihar, Mangal Bazar, P.O. + P.S. + District - Katihar

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. S.B.K.Manglam, Advocate
For the Waqf Board : Mr. Helal Ahmad, Advocate
For the Respondents Nos. 6 & 7 : Mr. Rashid Rais, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 24-08-2017

Heard learned counsel for the petitioners; the Bihar
State Sunni Waqf Board and respondents no. 6 and 7.

2. The petitioners have approached the Court for the
following reliefs:-

*“i. For issuance of an appropriate writ in the nature
of CERTIORARI, for quashing the order dated*



26-08-2013 passed by Ld. Presiding Officer, Waqf Tribunal, Patna in Waqf Appeal No. 7 of 2012, whereby and whereunder, Ld. Presiding Officer, Waqf Tribunal, Patna, vide his order dated 26-08-2013 was pleased to dismiss the appeal filed on behalf of the petitioners.

- ii. For issuance of an appropriate writ in the nature of CERTIORARI, for quashing the order dated 14.11.2012, passed by the Respondent no. 3 contained in memo no. 1573 dated 14-11-212, whereby and whereunder the Respondent no. 3 has been pleased to hold that the petitioners are the encroachers of the land of the Musafirkhana and their structure is illegal and without the permission under the Waqf Law on the ground that provisions dealing with encroachers as being mentioned in Section 54 of the Bihar Waqf Act, 1935 has not been complied even after repetitive directions from the Hon'ble High Court.*
- iii. For issuance of an appropriate writ in the nature of CERTIORARI, for quashing the inquiry report of the Circle Officer, Katihar contained in letter no. 1665 dated 29.12.2011, whereunder the Circle Officer has come up with finding that new tenancy can be created in favour of the petitioners on the ground that the said enquiry cannot be termed as enquiry in the eyes of law.*
- iv. For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the*



writ petitioner is entitled under the facts and circumstances of the case.”

3. In sum and substance, the petitioners who are running shops on the property of the respondent no. 6 have prayed for allotment to them the developed area for running their shops.

4. Though the matter has been pending for long but today the categorical stand of the petitioners is that if the respondent no. 6 develops the area and constructs shops, the option of settlement should be given to them first.

5. On this point, learned counsel for the respondents no. 6 and 7 stated that upon developing the area and constructing shops, the same shall be leased out; however, the determination of rent would be by open auction and if the petitioners are ready to take the same at the rate which comes out after open auction, they would be ready to lease the said shops to the petitioners.

6. Learned counsel for the petitioners agrees to the same.

7. In view thereof, the writ petition stands disposed off with direction to the petitioners to vacate the area and hand over it to respondents no. 6 and 7. Thereafter, within four months, the respondents no. 6 and 7 shall ensure that whatever construction / development is to be made, the same is completed, at least of the



shops in question. At this juncture, learned counsel for the respondents submitted that in view of the area being prone to flood and also for them not to exceed the time fixed by the Court, some more time may be given to them.

8. In view of the aforesaid, balancing the equity, the Court would accept the plea that there may be difficulty in starting construction right way due to rainy/flood season. Accordingly, the petitioners shall hand over the premises latest by 1st December, 2017. Thereafter, the construction shall be completed, at least with regard to the portion to be given to the petitioners, latest within a period of five months i.e. April, 2018. Upon the completion being made, the process of auction for leasing out the same shall be followed, in which the petitioners shall also participate. If the petitioners match the bids during the auction, the last bid on which the auction ends, the petitioners shall have the first right for lease of the shop(s) in question, if they match the same at the time of the bid itself. To make matters clear, if at a point of time, the highest bid is Rs. 1000, the petitioners shall also have to bid Rs. 1000. In this fashion the bid / auction shall proceed till the time nobody bids beyond the bid amount matched by the petitioners. If the petitioners do not keep matching the highest bid, it would amount to them forfeiting / giving up their right and the shops shall be settled with



the persons who bid the highest amount which was not matched by the petitioners.

9. In view of the order being passed with consent, it is expected that the parties would strictly adhere to their part in the exercise, including the time frame, as indicated above.

(Ahsanuddin Amanullah, J)

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