

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12341 of 2014

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Vijay Prasad Son of Late Bindeshwari Prasad Shop No. 20 Sahi Masjid Complex
Chowk, Bari Masjid Arrah, P.S. Arrah (Town), Distt- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chairman Waqf Board, Patna.
2. The Chief Executive Officer, Bihar State Sunni Waqf Board, 34 Ali Immam Path (Harding Road), Patna.
3. The Secretary, namely Shabhirut Tauhid Son of Late Shamshul Tauhid, Managing Committee, Sahi Badi Masjid Waqf No. 522 Resident of Mohalla Brahbtra, P.S Arrah (Town), Distt- Bhojpur.
4. Ashok Prasad Son of Late Bindeshwari Prasad Shop No. 20, Sahi Masjid Complex Chowk, Badi Masjid, P.S- Arrah (Town), Distt- Bhojpur.
5. The Presiding Officer, Waqf, Tribunal Bihar, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Nil Kamal, Advocate

For the Respondents No. 1 & 2: Mr. Md. Helal Ahmad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 04-09-2017

Heard learned counsel for the petitioner and the Bihar State
Sunni Waqf Board (hereinafter referred to as the ‘Board’).

2. The petitioner has moved the Court for setting aside the
order passed by the Bihar Waqf Tribunal, Patna (hereinafter referred
to as the ‘Tribunal’), dated 31.12.2012 in Title Eviction Suit No. 04 of
2011.

3. The shop in question was rented to the petitioner’s father
and thereafter, due to various reasons, the Board wanted the same to
be vacated and when it was not done, Title Eviction Suit No. 02 of



2011 was filed before the Tribunal against Ashok Prasad, son of Late Bindeshwari Prasad.

4. Learned counsel for the petitioner submitted that Late Bindeshwari Prasad had left four sons, including Ashok Prasad, and though the rent was being paid through him, the petitioner was also managing the shop and thus without notice to him, the order is not binding on him. It was further submitted that the brother of the petitioner, namely, Ashok Kumar has become traceless in December, 2012. It was submitted that the matter be remanded to enable the petitioner to be heard in the proceeding.

5. Learned counsel for the Board submitted that the stand taken by the petitioner is misconceived, both on facts as well as in law. It was submitted that Late Bindeshwari Prasad was the original tenant and after his death in February, 2010, the rent was not paid and further Ashok Prasad continued to be in possession without taking permission of the Board and as the area was required for further purposes, notice was sent to vacate the shop but the same was not done and thus the Board had to approach the Tribunal. It was further submitted that even a notice was published in the daily newspaper '*Aaj*' on 08th July, 2011 but still there being no representation, the Tribunal has proceeded with passing the order which is justified.

6. Having considered the facts and circumstances of the



case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ petition. In the writ petition itself it has been stated that the rent of the shop was paid by the petitioner and his brother Ashok Prasad which is at paragraph-5 of the writ petition and further at paragraph-11, it has been stated that rent had been paid by the petitioner through his brother Ashok Prasad. Thus, as far as the petitioner is concerned, it is admitted by him that officially Ashok Prasad was paying rent. Moreover, the stand taken in the writ petition at paragraph-9 that Ashok Prasad became traceless from 26.12.2012, may not be relevant, for the reason that paper publication was on 08th July, 2011 i.e., almost one and half years prior to such alleged disappearance.

7. At this juncture, the Court would only comment that it is very surprising that, as has been alleged in the writ petition, the wife of Ashok Prasad filed an information petition before the Chief Judicial Magistrate, Bhojpur, Ara on 08.01.2013 i.e., after almost two weeks from the disappearance of her husband and without moving before the Police or the authorities concerned. Thus, a mere information petition and that too before the Chief Judicial Magistrate, Bhojpur, Ara, besides being misconceived, raises serious doubts with regard to the genuineness and intention for which it has been filed. The Court would further observe that the property admittedly being a



waqf property and the reason given for seeking eviction being that the area is required for reconstructing the mosque and also for its expansion, it goes without saying that one of the primary objects of waqf being the maintenance of mosque and the necessity for reconstructing and expansion of the mosque being the ground taken, is clearly a *bona fide* ground seeking such eviction/vacation of the premises. Further, the Court has gone through the impugned order of the Tribunal dated 31.12.2012 and finds that it is well considered. The issue of the same being *ex parte*, cannot be accepted in view of the discussion made earlier in this order.

8. For reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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