

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4501 of 2018

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1. Md. Mumtaz Quraishi son of Late Md. Akbar Resident of Mohalla - Deharia Azad Chowk, P.O. Katihar, P.S.- Katihar Town, District - Katihar.

2. Md. Mukhtar Alam son of Md. Jamaluddin Resident of Mohalla - Mofarganj, P.O.- Katihar, P.S.- Katihar Town, District - Katihar.

.... Petitioners

Versus

1. Bihar State Sunni Wakf Board, Haz Bhawan, 34, Harding Road, Patna through its Secretary.

2. The Chairman, Bihar State Sunni Wakf Board, Haz Bhawan, 34, Harding Road, Patna.

3. The Secretary, Bihar State Sunni Wakf Board, Haz Bhawan, 34, Harding Road, Patna .

4. The Chief Executive Officer, Bihar State Sunni Wakf Board, Haz Bhawan, 34, Harding Road, Patna.

5. The District Minority Welfare Officer-cum-Nodal Officer Wakf, Katihar Collectorate, Katihar.

6. Md. Nabi Hussain son of Late Md. Issa Resident of Mohalla - Rahmat Colony, P.O. and P.S.- Katihar, District - Katihar.

7. Md. Abid Ansari son of Late Abdul Majid, Resident of Mohalla - Barbana, P.O. and P.S.- Katihar, District - Katihar.

8. Shabir Khan, son of Sabal Khan, Resident of Mohalla - Laliyahi, P.O. and P.S. Katihar, District - Katihar.

9. Md. Mohiuddin @ Mister son of Late Alauddin Resident of Mohalla - Sharifganj, P.O. and P.S.- Katihar, District - Katihar.

10. Jawed Alam son of Late Salauddin Resident of Mohalla - Ladkaniya, P.O. and P.S. Katihar, District - Katihar.

11. Md. Ali Hussain son of Late Md. Khalil Resident of Mohalla - Ladkaniya, P.O. and P.S. Katihar, District - Katihar.

12. Md. Ramzani Ansari son of Late Md. Shafique Resident of Mohalla - Mirchaibari, P.O. and P.S. Katihar, District - Katihar.

13. Shabbir Ahmed son of Late Md. Shaheed Resident of Mohalla - Sharifganj, P.O. and P.S. Katihar, District - Katihar.



14. Md. Saleem son of Md. Kamaluddin Resident of Mohalla - Salamat Nagar, P.O. and P.S. Katihar, District - Katihar.

15. Md. Anwar Alam son of Salauddin Resident of Mohalla - Durgapur, P.O. and P.S. Katihar, District - Katihar.

16. Md. Afzar son of Late Md. Hanif Resident of Mohalla - Sharifganj, P.O. and P.S. Katihar, District - Katihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate
Mr. Bhagwati Prasad, Advocate

For the Respondents-Board : Md. Helal Ahmad, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-05-2018

Heard Mr. S.B.K. Mangalam, learned counsel for the petitioners and Mr. Helal Ahmad, learned advocate for the Bihar State Sunni Waqf Board (for short 'Board').

2. The reliefs prayed for by the petitioners in the present application filed under Article 226 of the Constitution of India are as under:-

(1) For issuance of an appropriate writ in the nature of certiorari for quashing the office order dated 07.01.2017 issued under the signature of the Respondent no. 4 and contained in his memo no. 3345 dated 07.11.2017, whereby and where under the Respondent Board has constituted the Managing Committee for Wakf State No. 2688, Qabristan



Idgah Meenar Karballa Mazarsharif situated at mauza- Laliyahi, Katihar on the ground that when the Respondent Wakf Board had called for a report from the Respondent no. 5, there was no occasion for the Respondent Board to constitute the Committee by the impugned order before the receipt of the report.

(2) For a declaration that if pursuant to the letter of the Respondent Board contained in its letter no. 2508 dated 05.09.2017, the District Wakf Committee, Katihar had already submitted its report on 09.10.2017 and recommended for constitution of the committee after holding a general meeting for the said purpose, then constitution of the Managing Committee by the Board under the impugned office order is absolutely arbitrary and mala fide and, therefore, cannot be sustained in the eye of law.

(3) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the Respondent Board to hold the general meeting of general public for the purposes of constitution of the Managing Committee for the said wakf in view of the recommendation of the Secretary, District Wakf Committee, Katihar and constitute the Committee as per the decision of general body meeting.

(4) For issuance of any other writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts



and circumstances of the case.

3. Mr. Mangalam, learned counsel for the petitioners submitted that Kabristan Idgah Meenar Karballa and Majarsharif situated in Mauza-Laliyahi, District-Katihar is registered as Wakf Estate No.2688. After the death of Chairman of the Managing Committee of the said Wakf, the Managing Committee in existence was superseded and for the purposes of constitution of a new Committee, the seven members of the existing Committee filed a petition before the Sub-divisional Officer, Katihar to depute a Magistrate for holding an election of Managing Committee on 25.05.2017 peacefully. In view of the aforesaid request, the Sub-Divisional Officer, Katihar vide order contained in Memo No.1060 dated 24.05.2017 deputed the Block Development Officer, Katihar for holding election. Thereafter, a general body meeting was convened on 25.05.2017, which was attended by the members of the said wakf. For the purposes of meeting, one Samsuddin was authorized to function as the Chairman and on his proposal, the members constituted a Committee for the said wakf of which one Md. Mojibur Rahman was unanimously elected as the President and Md. Anjum Parvej as the Secretary. Other members of the Managing Committee were also unanimously elected in the said meeting. Thereafter, Md. Mokhtar Alam, who was presiding over the meeting



forwarded the list of the office bearers of the Managing Committee to the Sub-Divisional Officer, Katihar on 29.05.2017. Subsequently, on 17.10.2017, the Board wrote a letter to the Nodal Officer, Wakf Estate-cum-District Minority Welfare Officer, Katihar to constitute a Committee after holding a general body meeting. The Executive Officer of the Board had also directed the Secretary of the District Wakf Committee vide letter dated 05.09.2017 to hold an inquiry into the rival claims received by two Managing Committees and submit a report. The Secretary, District Wakf Committee inquired the matter and submitted his report to the Board vide letter dated 09.10.2017. In the said letter, the Secretary had opined and recommended for constitution of a Committee after calling a general body meeting. After receipt of the said report, the Chief Executive Officer of the Board vide letter dated 17.10.2017 addressed to the respondent no.5 directed him to constitute a Managing Committee of the said wakf after holding a general meeting and submit a report. While respondent no.5 was yet to hold a general body meeting the Board in an arbitrary and illegal manner without constituted a Committee for the wakf in question.

4. Mr. Mangalam submitted that the very constitution of the committee by the Board is bad in law and is without jurisdiction. He submitted that under the Wakf Act, 1995



(for short 'Act'), there is no provision which authorizes the Board to constitute a Committee of the wakf. The Committee of the wakf has to be constituted by its members. He submitted that the utter haste shown in constitution of Committee by the Board itself is sufficient to show that the constitution of Committee has been made with ulterior motive.

5. *Per contra* Mr. Helal Ahmad, learned counsel for Board submitted that the Board has exercised its power vested under Sections 32 and 67 of the Act and same cannot call in question by filing a writ petition under Article 226 of the Constitution of India. He submitted that the wakf in question was registered on the basis of requisition submitted by Md. Mohiuddin @ Mister, Son of Late Alauddin as the wakf properties are Idgah, Meenar, Qabristan as per the provision under section 3(r) (i) of the Act. He contended that considering the fact that respondent no. 9 had submitted a request for registration of the Wakf Estate, he was made Secretary of the Managing Committee of the Wakf Estate No. 2688. According to him, as the Board had received two applications for constitution of Managing Committee of the Wakf Estate No. 2688, one by Nabi Hussain in which the respondent nos. 6 to 11 were the office bearers and the other by the petitioner. He contended that the statement made by the petitioner that after the death of Chairman of Managing



Committee of the said wakf, the Managing Committee in existence was superseded is wrong and misleading because prior to the impugned order dated 07.11.2017 no approval was granted to any Managing Committee of the Wakf Estate No.2688. So, there was no question of supersession of Managing Committee.

6. I have heard contentions advanced on behalf of the parties.

7. From the pleadings advanced on behalf of the parties, the Court finds that the petitioner has primarily raised a dispute in the matter of constitution of Committee of the Wakf Estate in question. A question would arise as to whether or not this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India entertain such an application and adjudicate the dispute.

8. The answer, in my considered opinion would be a firm no. Firstly, because several disputed questions of fact have been raised and secondly, because in order to determine any dispute, question or other matter relating to a wakf or wakf property under sub-section (1) of Section 83 of the Act, the jurisdiction has been vested in Tribunal having jurisdiction in relation to the particular area.

9. Any Mutawalli or person interested in a wakf or



any other person aggrieved by an order made under the Act or Rules made thereunder may make application to the Tribunal for determination of any dispute, question or other matter relating to wakf.

10. In this regard, it would be relevant to take note of sub-sections (1) and (2) of Section 83 of the Act, which read as under:-

“83. Constitution of Tribunals, etc.—(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.”

11. Thus, it would be evident that the petitioner, if aggrieved, by the order of the constitution of Committee by the



Board has a remedy to approach the Tribunal for determination of the dispute under sub-sections (1) and (2) of Section 83 of the Act.

12. The issue regarding maintainability of writ petition in such matters has been considered by the various High Courts.

13. In **Board of Waqf, West Bengal Vs. Anis fatma Begum [(2010) 14 SCC 588]**, the Supreme Court has held that no writ petition can be entertained by the High Court directly against the order passed by the Board and the party aggrieved must approach the Tribunal for the redressal of his grievance.

14. After taking into consideration Section 83 and 84 of the Act, 1995, the Supreme Court held as under:-

“In our opinion, all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil court or by the High Court straightway under Article 226 of the Constitution of India.”

15. Thus, in view of the ratio laid down by the Supreme Court as also in view of the Act being a special Act and self-contained code which provides a remedy i.e. an equally



efficacious and speedy, I am of the considered opinion that the petitioners shall raise their grievance in respect of constitution of Committee of the wakf in question first before the Tribunal. I am also of the view that such disputes cannot directly raised before this Court under Article 226 of the Constitution of India.

16. Accordingly, the writ petition is dismissed. However, since the jurisdiction in the matter vests in the Tribunal, the petitioners may approach the Tribunal for the redressal of their grievance raised in the writ petition.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2018
Transmission Date	NA

