

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1179 of 2017

arising out of

Civil Writ Jurisdiction Case No.11065 of 2015

Zaki, Son of Late Md. Qumruddin, Resident of Mohalla, Banoliya, P.S.-
Biharsharif, District-Nalanda.

... .. Petitioner-Appellant/s

Versus

1. The State of Bihar, through its Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate-Cum-Permanent Member of Sogra Waqf Estate Nalanda at Biharsharif.
3. The Sub-Divisional Officer, Nalanda at Biharsharif.
4. That Bihar State Sunni Waqf Board, Patna through its Secretary, Bihar State Sunni Waqf Board, Patna.
5. The Chief Executive Officer, Bihar State Sunni Waqf Board, Patna.
6. Janab Sayed Shah, S/o not Know Saifuddin Firdausi, Sajjadanashin, Khanquash Mozam, Permanent Member, Biharsharif, Nalanda.
7. Janab Syed Sadullah Quardri, S/o Not Known Khanquash, Mojibia, Phulwarisharif, Patna Permanent Member.
8. Janan Md. Shahab Akhtar, S/o Not Known, Retired I.G. (I.P.S.) B/1-37, Alingar Colony, Patna.
9. Janab Abdul Quddus, S/o Not Known (Ex. Zila Parishad Member), Moh-Lahari Sarai, P.S. & District-Nalanda.
10. Janab Salman Raghib, S/o Not Known, M.L.C. Nawada
11. Janab M.S. Aftab, S/o not Known, Moh. Sakunat Biharsharif to Represent Weavers, Nalanda.
12. Janab Rashid Azhar, Advocate, S/o Not Known, Qumashpur, Biharsharif, Nalanda.
13. Janab M.B. Shahabuddin, Advocate, S/o Not Known, Qamashpur, Biharsharif, Nalanda.
14. Janab Zakir Hussain, Advocate, S/o Not Known, Mohalla-Sherpur, Biharsharif.
15. Janab Sultan Ansari, S/o Not Known, Khanquash, Biharsharif, Nalanda.
16. Janab Monswar Ali Rayen, S/o Not Known, Sohsarai, Biharsharif, Nalanda.
17. Janab Mumtaz Ali, Advocate, Son of Fasahal Hussain Karim, at Civil Court, Biharsharif, Nalanda P.S. + P.O.+ District-Nalanda.
18. Janab Asghar Shamim, S/o Late Mahboob Alam Belchi Market, Biharsharif, Nalanda (Ex.Zamindar).
19. Janab Md. Abdul Khair Mallik, S/o Not Known, Sabbait, P.S.-Rajgir, Biharsharif, Nalanda.
20. Janab Akhtar Hassan Azad Khan, S/o Not Known, Biharsharif Nalanda.
21. Janab Tarique Imam, S/o Not Known, (Regional Director, Mahulana Azad national Urdu University) New Delhi.
22. Janab S.M. Sharif, S/o Late Syeed Abu Naseer (Mutawalli of the Soghra Waqf Estate), Village-Panesha, P.S.-Hilsa, District-Nalanda.
23. Janab Abdul Haque, S/o Late Abdul Hai, (Naib Awal Incharge of Soghra Wafq Estate, Moh. Kasi Takia, P.O. + P.S.-Biharsharif, District-Nalanda.
24. Superintendent of Police, C.B.I., Patna.

... .. Respondents-Respondent/s



Appearance :

For the Appellant/s	:	Mr. Y. V. Giri, Senior Advocate Mr. Hansraj, Advocate
For the State	:	Mr. K. K. Jha -AAG 8 Mr. Amish Kumar, Advocate
For the CBI	:	Mr. Sanjay Kumar, SC Mr. Bipin Kumar Sinha, SC

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-01-2018

Seeking exception to an order dated 11.08.2017 passed by the Writ Court in CWJC No.11065 of 2015 and analogous case bearing CWJC No.20076 of 2016, in the matter of directing enquiry by the Central Bureau of Investigation (hereinafter referred to as 'the CBI') with regard to certain affairs of Soghra Waqf Estate No.2 situated in Biharsharif, District-Nalanda, this appeal has been filed and it is the case of the appellants that in spite of the fact that a Division Bench of this Court in **CWJC No.10171 of 2010 (Md. Jamil Akhtar vs. The State of Bihar & Ors.)** decided on 19.04.2017, already directed the State Government to proceed under Section 66 of the Waqf Act, 1995 (hereinafter referred to as 'the Act') and an enquiry into the matter has been ordered by the CBI which was not called for. It was stated that with regard to the same issue when the matter is already pending consideration in an enquiry under Section 66 of the Act,



the enquiry by the CBI without recording any specific reason as to why an enquiry by the CBI is called for, the action of the learned Writ Court in passing the impugned order is unsustainable, particularly in view of the fact that the question involves enquiry into certain deed of waqf, a *waqfnama*, which was executed more than 120 years back in 1896 and the only dispute in the writ petition is as to who is the lawful *Mutwalli* of the property in question.

Having heard learned counsel for the parties at length, we find that with regard to the same *waqf* property when the matter came before a Division Bench of this Court in a public interest litigation being **CWJC No.10171 of 2016 (Md. Jamil Akhtar Vs. The State of Bihar & Ors.)**, a co-ordinate Division Bench of this Court on 19.04.2017 took note of various aspects of the matter and after considering the submission of the Waqf Board and after the learned Principal Additional Advocate General was directed to assist the Court, the Division Bench took note of the provisions of Section 66 of the Act, disposed of the matter by so observing in paras 5, 6 and 7:-

“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.”

Now with regard to the same issue, a CBI enquiry has been ordered even though, the order of the Division Bench was brought to the notice of the learned Writ Court. We have to observe that the learned Writ Court has not indicated as to why the order having already been passed by the Division Bench, further enquiry by the CBI is called for.

A perusal of the learned Writ Court's order indicates that merely because it thought for ordering a CBI enquiry and the



counsel representing the CBI at that point of time agreed for the same, the order was passed.

In a case for directing enquiry by the CBI, it has been clearly laid down by the Hon'ble the Supreme Court in the case of **T. C. Thangaraj Versus V. Engammal and others, (2011) 12 SCC 328**, and in the case of **Pooja Pal Versus Union of India and others, (2016) 3 SCC 135**, that in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution merely on an asking, enquiry by the CBI should not be ordered. There has to be a cogent reason and justification and material available to show that the statutory enquiry and the statutory proceedings contemplated under law has failed and, therefore, enquiry by an independent agency like the CBI.

On a scanning through the facts of the present case, we find that apart from the fact that the matter was pending in an enquiry in a proceeding under Section 66 of the Act as directed by this Court in the case of **Md. Jamil Akhtar** (supra), there is nothing available on record to indicate as to why statutory enquiry in the statutory proceedings should be given go-by and an enquiry by an independent agency like the CBI conducted. That is one error in the order passed by the learned Writ Court.



That apart, the CBI has filed a detailed counter affidavit and have referred to a judgment of the Hon'ble Supreme Court in the case of **Rakesh Kumar Goel v. U.P. State Industrial Development Corporation, 2010 AIR SCW 4050** and to para 40 of the said judgment which reads as under:-

“40. At one stage we considered asking the CBI to investigate the present case as also other cases of auction sale and alienation of land by the Revenue Department of the State Government in the District of Ghaziabad. We, however, refrain from doing so for two reasons. One, the CBI is already overburdened and secondly, the matter is about 20 years old. The officers posted at Ghaziabad would no longer be there, some of them might even have retired.”

Learned counsel for the CBI argued that in this case, the enquiry is with regard to the assets and working of Soghra Waqf Estate No.2 and that too from the inception of the Waqf Estate under the *Waqfnama* (deed of Waqf) of the year 1896 and therefore, the CBI is not in a position to and under law cannot conduct such an enquiry. That apart, the CBI has showed their inability to conduct an enquiry with regard to the issue in question which is 120 years back, as it is already over-burdened with the investigations.



Having bestowed our anxious consideration on various issues and legal principles as are detailed hereinabove, we are of the considered view that in the case of **Md. Jamil Akhtar** (supra), this Court in public interest has already directed for an enquiry under Section 66 of the Act, it is not at all necessary or prudent to cause for enquiry by CBI in the present case as has been done by the learned Writ Court.

Accordingly, in the facts and circumstances of the case, finding the order passed by the learned Writ Court to be unsustainable, we allow this appeal, quash the order passed by the learned Writ Court in both the cases and direct the statutory authority to proceed in the matter in the proceedings under Section 66 of the Act and decide the issue within a reasonable period of time.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2018
Transmission Date	

