

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18066 of 2017

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Md. Arzoo. Son of Late Md. Rashid, Resident of Hazrat Syed Safdar Sheed Murad Shah Peer Rh. Waqf Eastate No. 663, High Court Mazar Sharif P.O.- G.P.O., Kotwali, District Patna- 800001.

.... Petitioner

Versus

1. The State of Bihar.
2. The Bihar State Sunni Wakf Board through its Chief Executive Officer, Patna.
3. The District Magistrate, Patna.
4. The S.S.P. Patna.
5. The S.D.O. Sadar Patna.
6. The Officer-in-Charge Kotwali P.S. Patna.
7. The Managing Committee, Hazrat Shah Syed Peer Murad Rahmatullah Allaih, High Court Mazar Sharif, Patna through it's the Joint Secretary Md. Israfil Anwar, Son of Ashgar Ali @ Munna Mian, Resident of Mohalla- Adaltganj, P.S. Kotwali, District- Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate
For the State : Mr. Rishi Raj Sinha –SC-19
Mr. Akhilesh Kumar Sinha, AC to SC-19
For Waqf Board : Mr. Helal Ahmad, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-05-2018

In the present writ petition, the petitioner has challenged notice dated 04.10.2017 issued under the signature of the Chief Executive Officer, Bihar State Sunni Waqf Board whereby the petitioner has been called upon to furnish his explanation as to why



an order against him to remove encroachment from Plot No.138, Khata No. 96, Circle No. 6, Ward No.21 be not passed.

2. Learned counsel for the petitioner submitted that notice issued by respondent Bihar State Sunni Waqf Board is bad in law. He submitted that the petitioner is a *bona fide* tenant and there is no determination of the fact that he is an encroacher. According to the petitioner, Bihar State Sunni Waqf Board has arbitrarily issued notice ignoring the relevant provisions of the Waqf Act, 1995.

3. On the other hand, Mr. Helal Ahmad, learned counsel appearing for the Waqf Board submitted that sub-section (1) of Section 5 of the Waqf Act, 1995 stipulates that whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is waqf property and, which has been registered as such under the Waqf Act, he has power to issue show-cause notice upon the encroacher. He further submitted that sub-section (3) of Section 54 stipulates that if, after considering the objections, received during the period specified in the notice, and after conducting an inquiry, the Chief Executive Officer is satisfied that the property in question is waqf property and that there has been an encroachment on any such waqf property, he may make an application to the tribunal for grant of order of vacation of such



encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the waqf.

4. I have heard learned counsel for the parties.
5. I find substance in the submissions made by the learned counsel appearing for the Bihar State Sunni Waqf Board.
6. The jurisdiction of the Waqf Board in such matters can be seen under Section 54 of the Waqf Act, 1995. The petitioner may put forth his case before the Waqf Board and satisfy it that he is not an encroacher. In such matter, he cannot directly move before this Court under Article 26 of the Constitution of India either for issuance of a writ of *certiorari* or a writ of *mandamus*.
7. In view of discussions made above, the writ petition being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.05.2018
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