

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3508 of 2015

=====

Sri Dinesh Sharma Son of Late Kaloot Mistri Resident of Mohalla -
Gaighat, Ara Machine, Under P.S. Alamganj, Patna City, Distt. - Patna

.... Petitioner/s

Versus

1. The Chief Executive officer, through its Bihar State Shia Waqf Board,
2nd Floor, Haj Bhawan, Harding Road, Ali Imam Path, Patna, P.S.
Sachivalaya, Distt. - Patna, Patna 1
2. Syed Nazam Ali S/o Syed Asad Zafri, Muttwali of Imam Bandi Begam
Waqf Estate No. 1, Patna Waqf of Mohalla - Gulzarbag, Post + P.O.
Gulzarbag, P.S. Alamganj, Distt. Patna, Patna - 8
3. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mohit Kumar, Advocate

For the Respondent/s : Mr. Alok Ranjan, A.C. to AAG-5

For the Board : Mr. Syed Ashghar Nazmi, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

10 02-05-2018

I.A. No. 9770 of 2015

Learned counsel for the petitioner seeks leave to
withdraw this interlocutory application in order to challenge the
vires of Rule 47 of the Bihar Waqf Rules, 2002 before the
Division Bench of this Court by filing an appropriate writ petition.

Leave is granted. The interlocutory application is
disposed of as withdrawn.

CWJC No. 3508 of 2014

In the instant writ petition filed under Article 226 of



the Constitution of India, the petitioner has prayed for quashing the order dated 23.12.2014 passed by the Bihar Waqf Tribunal, Patna in Waqf Appeal No. 9 of 2014 whereby the appeal directed against the order dated 15.09.2014 passed by the Bihar State Shia Waqf Board by which the petitioner was directed to vacate the premises occupied by him situated at Municipal Plot No.1982, Circle No. 82, Ward No. 53, Mohalla Gulzarbagh, Ashok Raj Path, P.S. Alamganj, under waqf estate Imam Bandi Begum Shaheba, Gulzarbagh, Patna has been dismissed.

Learned counsel for the petitioner submitted that the impugned order passed by the Tribunal is illegal and unsustainable in the eye of law.

Learned counsel appearing for the Bihar State Shia Waqf Board raised a preliminary objection with regard to maintainability of the writ petition under Article 226 of the Constitution of India before this Court against the order of the Tribunal. In this regard, he has placed reliance on a decision of this Court in ***Md. Wasiur Rahman & Anr. Vs. The State of Bihar & Ors. (CWJC No. 14622 of 2017)*** disposed of on 25.04.2018.

I find substance in the objection raised by the respondent Board.

In the case of ***Md. Wasiur Rahman*** (Supra), this Court taking into consideration various provisions of the Waqf Act,



1995 in detail as also the ratio laid down by the Supreme Court in ***Sadhana Lodh Vs. National Insurance Co. Ltd. [(2003) 3 SCC 524]***, and the decisions of the High Court of Shimla in ***Mumtaz Ahmed and ors. Vs. State of H.P. and ors. 2017(1) ShimLC 338]***, the High Court of Gujarat in ***Zubedaben Mohammedmiya and Ors. Vs. Gujarat State Waqf Board and ors.*** decided on 16.12.2015 in Special Civil Application No. 18852 of 2014, the High Court of Andhra Pradesh in ***Md. Abdul Kareem and Anr. Vs. Andhra Pradesh State Waqf Board and Ors. [2004(3) ALT 254]*** and the High Court of Karnataka vide judgment dated 26.08.2017 in ***Syed Asadulla Hussaini Vs. The Karnataka State Board of Wakfs Darul Awkaf***, came to the conclusion that in terms of proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 any person aggrieved by the orders of the Tribunal can invoke revisional jurisdiction of the High Court and a writ petition under Article 226 or a petition under Article 227 of the Constitution of India would not be maintainable.

For the reasons assigned in ***Md. Wasiur Rahman & Anr.*** (Supra), this Court is of the considered opinion that against the order of the Tribunal dated 23.12.2014 an application preferred under Article 226 of the Constitution of India cannot be entertained. The writ petition is accordingly dismissed. However, the petitioner would be at liberty to invoke the proviso to sub-



section (9) of Section 83 of the Waqf Act, 1995 for redressal of his grievance.

(Ashwani Kumar Singh, J)

Pradeep/-

U			
---	--	--	--

