

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19554 of 2018

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1. Noor Ahmad, S/o Late Gholam Moinuddin, R/o Pali Road, Tirpal Company,
P.O. & P.S.- Dehri-on-Sone, District- Rohtas.

2. Md. Ziauddin, S/o Late Gholam Moinuddin, R/o Pali Road, Tirpal Company,
P.O. & P.S.- Dehri-on-Sone, District- Rohtas.

.... Petitioners

Versus

1. The Bihar State Sunni Waqf Board, 34, Ali Imam Path (Hardinge Road), Haj
Bhawan, Patna, through the Chief Executive Officer.

2. The Chairman, Bihar State Sunni Waqf Board, 34, Ali Imam Path (Hardinge
Road), Haj Bhawan, Patna.

3. The Chief Executive Officer, Bihar State Sunni Waqf Board, 34, Ali Imam Path
(Hardinge Road), Haj Bhawan, Patna.

4. The District Magistrate, Rohtas.

5. The S.D.O./S.D.M, Dehari, Rohtas.

6. Janab Umar Farooque, S/o Late Gholam Moinuddin, R/o Pali Road, Tirpal
Company, P.O. & P.S.- Dehri-on-Sone, District- Rohtas.

7. Janab Shah Nawaz, S/o Late Gholam Moinuddin, R/o Pali Road, Tirpal Company,
P.O. & P.S.- Dehri-on-Sone, District- Rohtas.

.... Respondents

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Appearance :

For the Petitioner/s : Mrs. Namrata Mishra, Advocate

For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3

For the Respondent-Board: Mr. Vikash Kumar Shukla, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-10-2018

Heard learned counsel for the petitioners and learned



counsel for the State.

2. This writ petition has been filed by the petitioners for the following reliefs:-

(i) For quashing of memo no.1245 dated 18.09.2018 issued by the Sub-Divisional Magistrate, Dihari, Rohtas directing the petitioners to hand over charge of Joint Mutawalli of Dihari Wakf Estate No.1547 to the Respondent no.6 & 7 (Mutawalli & Joint Mutawalli) in presence of memo no.2217 dated 06.08.2018 of the Chief Executive Officer, Bihar State Sunni Wakf Board, as the same is wholly without jurisdiction.

(ii) For holding and declaring that the S.D.M. has been vested with power under section 28 of the Bihar State Sunni Wakf Board Act, 1995, for implementation of the decisions of the Board only and in the present case in absence of any order of the Board removing the petitioners as Joint Mutawalli of Dihari Wakf Estate no.1547, the order of the Sub-Divisional Magistrate, Dihari, Rohtas contained in memo no.1245 dated 18.09.2018, is wholly without jurisdiction.

(iii) For quashing of memo no.2217 dated 06.08.2018 of the Chief Executive Officer, Bihar State Sunni Wakf Board requesting the S.D.M. Dihari, Rohtas, to take action for handing over of charge by the petitioners, Joint Mutawalli to the Respondent no. 6 & 7 (Mutawalli & Joint Mutawalli) as per the provision of section 28 of the Bihar State



Sunni Wakf Board Act, 1995 being bad in the eyes of law.

(iv) Further for holding and declaring that any order /action can be passed/taken by the DM/Addl. D.M./SDM/SDO only under section 68(ii) of the Wakf Act for compliance of order under section 68(i) for handing over of charge from the removed Mutawalli as per decision of the Board, and section 28 vest power on the DM/Addl. D.M./SDM/SDO only for compliance of administrative decisions passed by the Board, the direction in the present case issued by the Ld. SDM under section 28 of the Wakf Act is thus without jurisdiction.

(v) For any other appropriate relief/reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

3. Learned counsel for the petitioner submitted that the order passed by the Chief Executive Officer of the Waqf Board and the consequent notice issued by the Sub-divisional Magistrate are bad in law and, thus, fit to be set aside.

4. Learned counsel for the Waqf Board raised a preliminary objection regarding maintainability of the writ petition in view of the statutory provisions prescribed under Section 83 of the Waqf Act, 1995.

5. Having heard learned counsel for the parties, I think it proper to examine the objection regarding maintainability of



the writ petition raised by the Waqf Board first.

6. Section 7 of the Waqf Act, 1995 provides that the Tribunal shall be constituted to determine questions relating to waqf property arising from the commencement of the Act.

7. Section 83 of the Waqf Act, 1995 provides for constitution of Tribunals for determination of any dispute, question or other matter relating to a waqf or waqf property. (i) Sub-section (2) thereof permits any mutwalli or any person interested in a waqf or any person aggrieved of an order made under the Act or Rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to waqf. (ii) Sub-section (4) thereof provides that every Tribunal shall consist of three members out of whom one person shall be a member of the State Judicial Service holding a rank, not below the rank of a District and Sessions Judge or Civil Judge, Class I, who shall be the Chairman, one person shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate and one person having knowledge of Muslim law and jurisprudence, as members. (iii) Sub-section (5) thereof stipulates that the Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908. (iv) Sub-section (7) thereof accords



finality to the decision of the Tribunal and makes it binding upon the parties and has been given the force of a decree made by a civil court. (v) Sub-Section (9) thereof provides that no appeal shall lie against any decision or order made by the Tribunal.

8. However, the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 not only gives jurisdiction to the High Court on its own motion or on the application of the Board or any person aggrieved, to call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination but also provides for remedy to the Board or any person aggrieved by any determination made by the Tribunal to question the correctness, legality or propriety of such determination and the High Court after satisfying itself may confirm, reverse or modify such determination or pass such order as it may think fit.

9. In view of the nature of dispute raised in the present writ petition and the provisions prescribed under Section 83 of the Waqf Act, 1995, I find merit in the objection raised by the Waqf Board.

10. Since the petitioners have an equally efficacious alternative statutory remedy available to them for the redressal of



their grievances, I am not inclined to entertain the writ petition.

11. Accordingly, it is disposed of with liberty to the petitioners to approach the Tribunal first for the reliefs prayed for in the instant writ petition.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2018
Transmission Date	NA

