

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17650 of 2017

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Athar Hussain Son of Late Akhtar Hussain Warsi, Resident of Mohalla- Kalami Mohalla, Police Station- Aurangabad T, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Minority Welfare Department, Govt. of Bihar, Patna.
3. The Chairman, Bihar State Sunni Waqf Board, 34, Ali Imam Path Harding Road, Haj Bhawan, Patna.
4. The Chief Executive Officer, Bihar State Sunni Waqf Board, 34, Ali Imam Path Harding Road, Haj Bha
5. District Magistrate, Aurangabad, Bihar.
6. Sub-Divisional Officer, Aurangabad, Bihar.
7. The Chief Executive Officer, Nagar Parishad, Aurangabad.
8. The Incharge District Minority Welfare Officer, Aurangabad.
9. Arif Hussain Ishrat, Son of Late Ashique Hussain, Resident of Mohalla- Pathan Toli, P.S. and District- Aurangabad.
10. Abdus Sattar Azad, Son of Late Jan Mohammad, Ajwer Nagar, P.S.- Aurangabad T, District- Aurangabad.
11. Master Mozaffar Khan, Son of Late Nezamuddin Khan, Resident of Mohalla- Pathan Toli, P.S. Aurangabad T, District- Aurangabad.
12. Ejaz Warsi, Son of Late Haji Nezamuddin Warsi, Resident of Mohalla- Pathan Toli, P.S. Aurangabad T, District- Aurangabad.
13. Haji Jasimuddin Quraishi, Son of Late Md. Karim Quraishi, Resident of Quraishi Mohalla, P.S.- Aurangabad T, District- Aurangabad.
14. Md. Jamil Ahmad, Son of Late Md. Shafique, Resident of Mohalla- Jhanda Masjid, P.S.- Aurangabad T, District- Aurangabad.
15. Md. Alam Ansari, Son of Isa Ansari, Resident of Tekari Mohalla, P.S.- Aurangabad T, District- Aurangabad.
16. Syed Athar Imam, Son of Mazhar Imam, Resident of Mohalla- Ali Nagar, P.S.- Aurangabad T, District- Aurangabad.
17. Tarique Aziz, Son of Late Idris, Resident of Mohalla- Biratpur, P.S.- Aurangabad T, District- Aurangabad.
18. Seraj Khalifa, Son of Bismil Khalifa, Resident of Mohalla- Shahganj, P.S.- Aurangabad T, District- Aurangabad.
19. Khizir Heyat Khan, Son of Late Abu Nasar Khan, Resident of Mohalla- Islam Toli, P.S.- Aurangabad T, District- Aurangabad.
20. Vigilance Investigation Bureau, through the Director, Central Vigilance, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ram Pravesh Nath Tiwari, Advocate Mr. Sandeep Kumar, Advocate
For the State	:	Mr. Pushkar Nrayan Sahi, A.A.G. 6 Mr. Dharendra Kumar, A.C. to A.A.G. 6
For Respondent/s 9,10	:	Mr. Rashid Izhar, Advocate
For Respondents 2,4	:	Mr. Md. Helal Ahmed, Advocate
For Respondent No. 7	:	Mr. Surendra Prasad Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA



ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-01-2019

This public interest litigation was filed through Shri Ram Pravesh Nath Tiwari as a counsel for the petitioner. During the pendency of this PIL, an application has been filed by the petitioner being I.A. No. 7008 of 2018 through a different counsel stating therein that in view of the action taken he does not propose to press this writ petition any further.

A supplementary counter affidavit has been filed on behalf of the District Minority Welfare Officer bringing on record the report of the committee constituted under the Chairmanship of Additional Collector, Aurangabad to report on the allegations of unlawful constructions having been raised while setting up a commercial complex on the property of the Wakf. In this supplementary counter affidavit filed today it has been asserted that set back areas have been violated and shops in excess of the sanctioned map appear to have been constructed.

In this regard, what is relevant is the affidavit of the Respondent No. 7 and the report submitted by its officials. The notice which was given by the Junior Engineer informing the Executive Officer of Nagar Parishad, Aurangabad on 29th July, 2017 is on record as Annexure 4 to the writ petition which



indicates that on inspection it was found that the constructions were being raised in violation of the sanctioned map. A counter affidavit which has been filed on behalf of the contesting Private Respondent Nos. 9 and 10 contains another report of three officials of the Nagar Parishad, Aurangabad, dated 21st August, 2017 indicating the rectifications that were being carried out and if they are permitted, the deviations would stand removed. This is Annexure R-9/5 to the said counter affidavit.

The Respondent No. 7 has filed a counter affidavit and along with it has appended the report dated 22nd November, 2017 in which slight deviations have been indicated in respect of the set back areas.

It appears that the property is a Wakf property and is undisputedly under the supervision, control, and governed by provisions of the Muslim Wakf Act, 1995. One Mr. Khurshid Ahmed, who is a Ward Councillor, filed Wakf Appeal No. 10 of 2017 before the Wakf Tribunal in respect of the same Wakf, which is pending consideration. It is thereafter the present public interest litigation was filed and when this was brought to the notice of the tribunal, the tribunal had to pass an order adjourning the matter which order is Annexure 9/1 to the counter affidavit of the Respondent No. 9.



At this stage, we may put on record that after entertaining this public interest litigation, an order was passed on 22nd February, 2018 which is extracted hereinunder.

“Respondent No. 4 is granted four weeks’ time to file counter affidavit.

However, it is clarified that in case it is finally found that construction has been made illegally, respondent No. 4 will have to remove the construction at their own cost.

List after four weeks.”

This was followed by an interim order on 4th July, 2018 directing the parties to maintain status quo the same is extracted hereinunder.

“Let a copy of the counter affidavit filed by Respondent No. 7 be served on the counsel appearing for Respondent No. 9 onwards. He may seek instructions in the matter and submit a report.

In the meanwhile, Respondent No. 5, The District Magistrate, Aurangabad is directed to look into the grievance of the petitioner, the counter affidavit filed by Respondent No. 7 and give his say with regard to the allegations of illegal construction, the report submitted by the Nagar Parishad and the consequential action taken in the matter.

List after four weeks.

In the meanwhile, status quo with regard to the construction as is existing today shall be maintained. We are constrained to pass the aforesaid orders keeping in view the report submitted by Respondent No. 7 which is before us indicating prima facie there to be illegal construction in the area in question.”

It is thereafter that the District Magistrate appears to have prepared his report and which has been made now part of the supplementary counter affidavit of Respondent No. 5, filed



today in Court. In the said supplementary counter affidavit, the deviations that were reflected in the report of the Nagar Parishad have been indicated, coupled with some other deviations with regard to increase in the number of shops having been constructed which, according to affidavit, is in deviation to the sanctioned plan.

Having considered the submissions raised and keeping in view the application for withdrawing the PIL that has been filed today, it would be apt for us to comment that the petitioner is stated to be an accused in a murder trial which fact has been categorically stated in paragraph 14 of the affidavit of Respondent No. 9 mentioning that the petitioner is accused for an offence under Section 302, Indian Penal Code, at Aurangabad in P.S. Case No. 446 of 1997, the trial whereof is still pending. We are, therefore, constrained to observe that we are doubtful about the bona fides of the petitioner in maintaining this Public Interest Litigation as the allegations against him are that keeping in view his background he tried to pressurise the Managing Committee of the Wakf to gain favours of allotment of shops. We are, however, not investigating the same, but suffice it to say that if this is the status of the petitioner, then the filing of a PIL by such a person should be discouraged.



At the same time, since it has been brought on record that there have been deviations in the constructions, then the Nagar Parishad, Aurangabad, is entitled to take action against the Wakf for having deviated from the plan for which it has ample powers under the Bihar Municipal Act, 2007.

So far as any mismanagement on the part of the Wakf is concerned, the same is already engaging the attention in the Appeal filed by Mr. Khurshid Ahmed and we are of the considered opinion that such matters stand covered by the provisions of Section 83 of the Muslim Wakf Act, 1995. Consequently, the Wakf Tribunal shall hopefully deal with the matter keeping in view the entire fact relating to the controversy which may fall within its jurisdiction for an appropriate decision. This will, however, not prejudice the power of the Nagar Parishad to take action in respect of the Municipal laws applicable for raising unlawful constructions.

We have also noticed that this Court has passed an order of status quo on 4th of July, 2018. We would, therefore, maintain the said order for the time being with a direction to the Nagar Parishad to pass an appropriate order in relation to the status of the constructions after putting the concerned Wakf through its Mutawali or Managing Official to notice in



accordance with law within a period of six weeks from today on presentation of a certified copy of this order before the Executive Officer of the Nagar Parishad, Aurangabad.

We further direct that Appeal No. 10 of 2017 stated to be pending before the Wakf Tribunal shall also be dealt with expeditiously and shall be disposed off preferably not later than 6 months from today after giving opportunity in accordance with the provisions of the Act and the Rules framed thereunder to the respective parties.

The Public Interest Litigation, therefore, is disposed off with the aforesaid directions.

The order of status quo shall continue till the passing of the order by the Nagar Parishad, Aurangabad or the Wakf Tribunal, as the case may be.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.01.2019
Transmission Date	N/A

