

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16517 of 2017

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1. Md. Irshadullah Son of Late Amanullah
 2. Md. Firoz Son of Late Waziruddin
 3. Naqui Imam Son of Late Jaliluddin
 4. Shahina Perween Wife of Naqui Imam
 5. Khurshid Kamal Son of Late Moiduddin All residents of Village - Bhusaula Danapur, P.S. Phulwarisharif, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. Principal Secretary Revenue and Land Reforms Department, Government of Bihar, Patna.
3. Collector, Patna.
4. Sub Divisional Officer Patna Sadar, District Patna.
5. Circle Officer, Phulwarisharif, District - Patna.
6. The Chief Executive officer, Bihar State Sunni Waqf Board, Haj Bhavan, IInd Floor, Ali Immam Path (Harding Road), Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shabbir Ahmad
For the Respondent/s : Mr.S.C. Yadav - Gp15

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 11-07-2022 Though, the present writ petition has been filed for quashing the notice dated 25.10.2017 issued by the Circle Officer, Phulwarisharif, Patna in Encroachment Case No. 610(M)/2014, however, the learned counsel for the petitioner has limited his prayer in the present case to grant of opportunity to the petitioner to file fresh objection and thereafter, the Circle Officer, Phulwarisharif be directed to pass appropriate order upon the same.

Per contra, the learned counsel for the Waqf Board i.e. the Respondent No. 6 has submitted, by referring to the averment made



in the interlocutory application filed on behalf of the respondent no. 6 i.e. I.A. No. 3 of 2021 that the properties appertaining to Khata No. 83, Plot no. 829, Khata no. 372, Plot no. 819, Khata no. 320, Plot no. 755, Khata 296, plot no. 756, total area 81 decimal situated in village Bhusaula, Danapur, Phulwarisharif has been registered as a Waqf in the office of Bihar State Sunni Waqf Board vide Waqf Estate No. 1488, in the year 1973. The fact is that the Waqf properties have been illegally encroached by Irshadullah (Petitioner no.1), Arshad Alam, Khurshid Kamal (petitioner no. 5), Naqui Imam @ Dr. Md. Lal (Petitioner no. 3), Shahina Perween (Petitioner no.4), Waziuddin, Firoz (Petitioner No. 2) and Naushad. It is further submitted that by virtue of powers conferred under Section 54 of the Waqf Act, 1995, the Waqf Board passed an order dated 26.02.2008/ 29.2.2008 for removal of illegal occupants from plot nos. 819, 829, 755 and 756 and directed the Circle Officer, Phulwari Block to take appropriate steps. The said order dated 26.02.2008 was passed by the Chief Executive Officer, Bihar State Sunni Waqf Board, Patna, after hearing all the parties including the writ petitioners who had filed their respective show cause reply before the C.E.O. It has been further contended that subsequently one Md. Nausad and others had filed title suits bearing Title Suit No. 4 of 2008, Title Suit No. 01 of 2009 and Title Suit No. 130 of 2009, before the Bihar Waqf Tribunal, Patna challenging the aforesaid order dated 26.02.2008/ 29.2.2008 passed by the Respondent no. 6, however, the same was dismissed by



a judgment dated 20.10.2011, whereafter the said judgment dated 20.10.2011 was challenged by way of a writ petition bearing C.W.J.C. No. 1531 of 2012, however, the same also stood dismissed by a judgment dated 22.08.2012. It is also contended that the judgment dated 22.08.2012 was challenged before the learned Division Bench of this Court as also before the Hon'ble Supreme Court of India, however, all the petitions have stood dismissed. In such view of the matter, the Respondent no. 6, by an application dated 3.5.2014, filed under section 55 of the Waqf Act, 1995, requested the Sub-Divisional Magistrate, Sadar, Patna to remove the aforesaid encroachment in question made over the Waqf Board property, whereupon the aforesaid encroachment case No. 610(M) of 2014 was registered.

It is thus submitted that under sections 28 and 55 of the Wakf Act, 1995, the Respondent No. 6 is merely required to request the District Administration for removal of the encroachment.

Per contra, the Ld. Counsel for the petitioner has refuted the aforesaid contention of the Respondent No.6 and has submitted that for removal of encroachment, the Respondent no. 6 is required to approach the Waqf Tribunal.

Having regard to the averments made in the interlocutory application i.e. I.A. No. 3 of 2011 and considering the liberty sought for by the petitioner, I deem it fit and proper to grant liberty to the petitioner to file appropriate objection before the Circle Officer,



Phulwarisharif within a period of four weeks from today. The respondent no. 6, if so advised, may also file its submissions before the Circle Officer, Phulwarisharif. The Circle Officer, Phulwarisharif is consequently directed to take a final decision with regard to the dispute in question within a period of eight weeks of receipt of the show cause reply of the petitioner.

It is needless to state that for a period of 12 weeks from today, status quo existing as on today, shall be maintained.

The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

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