

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1103 of 2022

In
Civil Writ Jurisdiction Case No.15359 of 2021

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Naushad Azim, Son of Lalte Md. Zafar Raza, Resident of Village - Akbarpur,
P.O. - Rajhat, P.S.- Akbarpur, District - Nawada.

... .. Petitioner

Versus

1. The Bihar State Sunni Wakf Board, through its Chairman 34, Harding road, Patna (Bihar).
2. The Chief Executive Officer, Bihar State Sunni Wakf Board 34, Harding Road, Patna (Bihar.)
3. The Secretary, Jama Masjid Akbarpur, Wakf State No. 1278, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
4. The President, Jama Masjid Akbarpur, Wakf State No. 1278, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
5. Md. Zafir Uddin Son of Late Edrish Miyan, Resident of Village - Akbarpur, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
6. Md. Eshrael Son of Late Molbi Abdul Gafar, Resident of Village - Akbarpur, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
7. Naoshad Raeen Son of Late Gafoor Gabzi Faroz, Resident of Village - Akbarpur, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
8. Md. Nesar Uddin Son of Late Baudhu Miyan, Resident of Village - Akbarpur, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
9. Md. Nasim Uddin Son of late Aiyasin Miyan, Resident of Village - Akbarpur, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
10. Akhtar Hussain, Resident of Village - Akbarpur, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.
11. Ainulhaque Son of Md. Hanif Miyan, Resident of Village - Akbarpur, P.O. - Rajhat, P.S. - Akbarpur, District - Nawada.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar Sinha
For the Opposite Party/s : Mr.Md. Helal Ahmad

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

3 03-08-2022

This application has been filed by the petitioner for



restoration of C.W.J.C. No. 15359 of 2021, which stood dismissed for want of prosecution on 21.06.2022.

Considering the submissions made at the Bar and the pleadings made in the restoration application, the prayer is allowed. C.W.J.C. No. 15359 of 2021 is restored to its original file.

C.W.J.C. No. 15359 of 2021

1. The petitioner claims himself to be a tenant in the premises of Jama Masjid, Wakf Estate No. 1278, Akbarpur, District- Nawada. He was running a shop in order to earn his livelihood. In the month of February, 2014, upon request of the Wakf Estate, all the eight tenants including the petitioner handed over the keys of the shop to the Managing Committee of the Wakf Estate so that reconstruction could be done.

2. The contention of the petitioner is that the Managing Committee of the Wakf Estate had assured that after reconstruction the shop would be redelivered to the tenants. However, out of eight tenants, seven were allotted the shops after reconstruction, but the petitioner was denied possession of the shop.

3. Being aggrieved, the petitioner filed a writ petition before this Court vide C.W.J.C. No. 5677 of 2016, which was



disposed of vide order dated 06.04.2016 with liberty to the petitioner to move before the Tribunal under Section 83 of the Wakf Act.

4. After the aforesaid order dated 06.04.2016 was passed by this Court, the petitioner moved before the Bihar State Sunni Wakf Board, Patna (for short 'Wakf Board') for allotment of shop no.8. The Wakf Board issued notice to the Managing Committee of the Wakf Estate No. 1278 and after hearing the parties, allowed the petition vide order dated 07.01.2020 directing the Secretary, Managing Committee, Wakf Estate No.1278 to allot the shop to the petitioner after obtaining affidavit and undertaking from him that he will run the shop himself and shall not sublet the shop to any other person.

5. Learned counsel for the petitioner submitted that in spite of the order passed by the Wakf Board, the respondent Wakf Estate is not allotting the shop no.8 to the petitioner. He submitted that the act on the part of the respondent Wakf Estate is discriminatory in nature.

6. The respondent nos.1 and 2 have filed their counter affidavit wherein it has categorically been stated that vide order dated 07.01.2020 the Wakf Board had directed the Secretary of Managing Committee, Wakf Estate No.1278 to allot one shop to



the petitioner after obtaining affidavit and undertaking from him that he will run the shop himself and shall not sublet the shop to any other person. The petitioner was further directed to deposit the dues of the shop and to obey the terms and conditions of allotment of shop. The Secretary of the Managing Committee of the Wakf Estate requested the petitioner to submit affidavit and undertaking in terms of the order dated 07.01.2020 passed by the Wakf Board. However, instead of submitting affidavit and undertaking before the Secretary of the Managing Committee of the Wakf Estate, he filed an application through his advocate to the Wakf Board and the Wakf Board forwarded the said application of the petitioner to the Secretary of the Managing Committee of the Wakf Estate for needful action. The petitioner did not comply with the direction of the Wakf Board or the Wakf Estate and filed the writ petition before this Court.

7. In the counter affidavit, it has further been stated that the Wakf Estate had allotted one shop in old complex to the petitioner with monthly rental of Rs.115/-, but without due approval or information to the authority, the petitioner sublet his shop to one Tauhid Alam and collected Rs.1000/- per month from him. Since the condition of the building was bad, the Managing Committee of the Wakf Estate decided to reconstruct



the shop with a condition that Rs.70,000/- shall be taken from the old shop owner as a security deposit and an agreement has to be executed by the allottee and rent of the shop will be Rs.1000/- per month. The petitioner did not deposit the rent of the shop since August, 2006 to 2013 at the rate of Rs.115/- per month.

8. It would be evident from the counter affidavit filed on behalf of the respondent nos.1 and 2 that the petitioner has concealed the material facts in his application. Furthermore, when the petitioner had approached this Court earlier, the writ petition was disposed of with liberty to the petitioner to approach the Wakf Tribunal for the redressal of his grievances.

9. Admittedly, the petitioner did not approach the Wakf Tribunal and filed his application before the Wakf Board. His prayer before this Court is for issuance of a direction to the respondents, especially, the President and Secretary of Wakf Estate No. 1278 to comply with the order passed by the Wakf Board. In other words, the petitioner has invoked extra-ordinary writ jurisdiction of this Court for execution of an order passed by the Wakf Board. The extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked for execution of an order passed by the statutory authority,



Board or the court.

10. The application is thoroughly misconceived. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Dr. Anshuman, J)

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