

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10173 of 2021

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Gulam Jafar Ali son of Javed Ali resident of Nayi Sadak, Nawab Bahadur
Road, Patna City, P.S. - Khajelalan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Department of Homes, Govt. of Bihar, Patna.
3. The Principal Secretary, Minority Welfare Department, govt. of Bihar, Patna.
4. The Director General, Vigilance Department, Patna.
5. The Bihar State Shia Waqf Board, Patna through Chief Executive Officer 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police Station- Sachivalaya, District- Patna.
6. The Chief Executive Officer, Bihar State Shia Waqf Board, 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police Station- Sachivalaya, District- Patna.
7. Shir Syed Afzal Abbas, Chairman, Bihar State Shia Waqf Board, Patna having his office at 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police Station- Sachivalaya, District- Patna.
8. Shri Syed Ghulam Hussain, Member, Bihar State Shia Waqf Board, Patna having his office at 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police Station- Sachivalaya, District- Patna.
9. Shri Syed Israr Hussain, Member, Bihar State Shia Waqf Board, Patna having his office at 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police Station- Sachivalaya, District- Patna.
10. Shri Syed Amanat Hussain, Member, Bihar State Shia Waqf Board, Patna having his office at 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police Station- Sachivalaya, District- Patna.
11. Shri Mirza Arif Raza, Member, Bihar State Shia Waqf Board, Patna having his office at 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police Station- Sachivalaya, District- Patna.
13. Shri Asif Imam, Member, Bihar State Shia Waqf Board, Patna having his office at 2nd Floor, Haj Bhawan, 34 Ali Imampath (Harding Road), Police



Station- Sachivalaya, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Syed Asgher Najmi, Advocate
For the Respondent/s : Mr. P.K. Shahi (AG)

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT**

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-04-2023

1. The writ petition is filed in public interest, challenging the appointment of respondent Nos. 7-13 as Members of the Bihar State Shia Waqf Board, Patna constituted under Section 14(9) of the Waqf Act, 1995 and the election of the 7th respondent as the Chairman of the newly constituted Board. The gazette notification dated 22.10.2020 appointing respondent Nos. 7-13 as Members of the Waqf Board is produced as Annexure-1, the notification to conduct election of the Chairman of the Waqf Board from amongst the notified candidates to be held on 29.10.2020 is produced as Annexure-2 and the gazette notification declaring the 7th respondent as the elected Chairman of the Waqf Board is produced as Annexure-3; all of which documents are sought to be set aside.



2. The learned Senior Counsel appearing for the petitioner pointed out that respondent No. 7 originally belonging to Lashkaripur has his house situated and constructed in a plot which in the revenue records is shown as a graveyard. The above plot which is a graveyard is not registered under the Waqf Board and despite an application filed for such registration, it has not been done due to the influence exerted by respondent No. 7. It is also alleged that respondent No. 7 is also accused in a police case in which the de facto complainant has alleged illegal gratification by the 7th respondent on the pretext of securing a government employment. Further malafides is alleged on the 7th respondent since as a counter blast, the son of the 7th respondent has registered a case against the de facto complainant who alleged illegal gratification by the 7th respondent. There are also allegations made against the eligibility of respondent Nos. 9 and 12 but not against any of the other respondents, who are nominated to the Committee. Before us, the learned Senior Counsel did not address any argument against respondent Nos. 9 and 12 and also withdrew the submission on the earlier occasion that the 7th respondent is not a Shia Muslim.

3. Learned Senior Counsel appearing for the party respondents pointed out that notice was issued only on the basis of



the oral submission made on behalf of the petitioner that the 7th respondent is not a Sunni Muslim. The said contention having been withdrawn, there is no question of maintaining the public interest litigation; which in any case is not maintainable. The petitioner does not even have a contention that he is a Shia Muslim and the writ petition is ill motivated and malafide and a clear attempt to settle personal scores.

4. Learned Senior Counsel for the petitioner, however, points out there is absolutely no averment made as to the 7th respondent being not a member of the Shia community in the writ petition. Learned Senior Counsel also confessed that the earlier assertion was an inadvertent omission on his part but there is nothing to show that notice was issued only on this allegation. The learned Senior Counsel specifically points to Section 16 of the Waqf Act, 1995, which prohibits an encroacher from holding the office of a member of the Board. It is also pointed out that Section 54 is not invoked to clear the encroachment since the 7th respondent is the Chairman of the Waqf Board.

5. We have looked at Section 16 specifically referred to by the learned Senior Counsel which speaks of disqualification for being appointed, or for continuing as a Member of the Board. The disqualification under clause (d) is the conviction under an offence



involving moral turpitude and under clause (da) of being held guilty of encroachment under any Waqf property. The allegations raised against the 7th respondent, as seen from the memorandum is only regarding the registration of an FIR against him and the unsubstantiated allegation of an encroachment. The 7th respondent is not stated to have been convicted in an offence involving moral turpitude nor is it the case that he is held guilty of encroachment of any Waqf property.

5. We have also looked at Section 54 which requires removal of encroachment from the Waqf property, which empowers the Chief Executing Officer *suo motto* or on receipt of any complaint to proceed against the encroachment alleged on any land, building, space or other property which is a Waqf property and which has been registered as such under this Act. It is the specific contention of the petitioner that the property on which the 7th respondent is alleged to have constructed a house has not been registered under the Waqf Act. The petitioner also has not made any such application nor any members of the community alleging the property to be a graveyard. Further, it is very pertinent that despite the petitioner having filed a public interest litigation, he has not thought it fit to raise a complaint of encroachment before the Chief Executing Officer.



5. We find the writ petition to be ill motivated and not having put forth any public interest. We dismiss the writ petition.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

sharun/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.05.2023
Transmission Date	N/A

