

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17142 of 2022

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1. Mohammad Abid, Son of Late Mohammad Rafik, Resident of Near High Court, Mazar Campus, Patna G.P.O., P.S.- Kotwali, District- Patna, Bihar, Pin- 800001.
 2. Md. Tahir, Son of Md. Halim Resident of Alamganj Narkat Ghat, Near of Mayor office, Dhanuki, P.S.- Alamganj, District- Patna, Bihar- 800007.
 3. Mohammad Safdar, Son of Buddhu Miyan Resident of Khaja Gali Dujra Main Road, Dujra, Patna G.P.O., P.S.- Buddha Colony, District- Patna, Bihar- 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Minority Welfare, Government of Bihar.
2. The Waqf Board, through the CEO, Bihar State Sunni Waqf Board, Bihar.
3. The Principal Secretary, Department of Minority Welfare, Government of Bihar.
4. The Secretary, Managing Committee, High Court Mazar Sharif Waqf Estate, Waqf No.- 663, Near High Court, Baily Road, Patna-1, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ajit Kumar Ojha, Advocate.
For the State	:	Mr. Sudhanshu Shekhar, AC to SC-24.
For Respondent no.4	:	Mr. Ashhar Mustafa, Advocate.
		Mr. Abu Nasar, Advocate.
For Respondent no.2	:	Mr. Helal Ahmad, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 07-12-2023

Heard Mr. Ajit Kumar Ojha, learned counsel appearing on behalf of the petitioner; Mr. Sudhanshu Shekhar, learned AC to SC-24 for the State; Mr. Ashhar Mustafa, learned counsel along with Mr. Abu Nasar, learned counsel for the respondent no.4 – Patna High Court Mazar Sharif Waqf Estate and Mr. Helal Ahmad, learned counsel for the respondent no.2 – Bihar State Sunni Waqf Board.



2. The petitioner has filed the writ petition for the following reliefs:

“For a direction to the respondent authorities to allow the petitioners to ply a different trade during the period in which the “Lahasa Bazaar” is operative on the Patna High Court Mazar Sharif.”

3. The grievance of the petitioner is that he has been deprived of his livelihood whose earning was from the shop during the period of Lahasa Bazar. Petitioner is a tenant and tenancy is under the Managing Committee of the Patna High Court Mazar Sharif Waqf Estate.

4. The writ petition relates to allotment of a shop in “Lahasa Bazar” which lasts for two months. The writ petition was filed on 08.12.2022. The period appears to have expired, however, no amendment has been brought in the writ petition for the current “Lahasa Bazar” for which tender has already been awarded in favour of the tenderer. The concern of the petitioner is that he has right to do his business over the area on which he is having his motor garage since long period and he is paying rent without any default. By allowing Lahasa Bazar the access of the customers to the motor garage has been stopped which has affected the petitioner’s livelihood. The petitioner had made request before the Waqf Estate for allotting him a shop on temporary basis in said “Lahasa Bazar” to earn for his subsistence of family and prays for sympathetic consideration of



his grievance. The petitioner is ready to make payment of the requisite amount either to the Waqf Estate or to the tenderee, so that he is not left without any means of livelihood.

5. This Court had adjourned the matter so that the counsel appearing on behalf of the Waqf Estate may seek instruction and communicate the decision of the Waqf Estate with respect to the allotment of temporary shop so that the petitioner may not be made redundant and his family may not suffer.

6. *Per contra*, learned counsel appearing on behalf of Waqf Estate submits that he has received instruction that the matter relating to mischievous character of the petitioner has been raised before the Waqf Estate – respondent no.4. It has also been reported that the petitioner is an encroacher and not a tenant. He informs that a encroachment proceeding is pending against the petitioner.

7. Heard the parties.

8. The rights guaranteed under Article 25 and 26 of the Constitution are subject not only to morality and health but also to public order. A distinction must be made between religion in its doctrinal and ritual aspect, which is a private purpose, and the administration of property dedicated to the



public for religious purposes, is a public purpose. In '*Amulya Chandra v. Corporation of Calcutta*', *AIR 1922 Cal 333 (O)*, the question for decision was whether the acquisition of certain properties by the Corporation of Calcutta for building a Dharmasala for accommodating pilgrims resorting to a Hindu temple was for a public purpose. The Privy Council held that it was, and that it was not excluded from the term "public purpose" for the reason that it would benefit pilgrims and Church dignitaries. The position in law is settled that the State did not interfere in matters of religion in its doctrinal and ritual aspects treating it as a private purpose, it did exercise control over the administration of properties endowed for religious institutions treating it as a public purpose, if the institutions were themselves dedicated to the public.

9. In the present case, just prior to the announcement of the tender notice for holding "Lahasa Bazar", the Waqf Estate proceeded to initiate encroachment case against the petitioner which is a different subject matter. Concern is whether petitioner who has been earning his livelihood as a motor mechanic from the premises of the Waqf Estate has been denied to operate garage on the Waqf Estate's property although, there is nothing on record which suggests that the petitioner has,



in any manner, meddled with or impinged on the doctrinal or ritual aspects of the Waqf Estate. The petitioner has shown his desire that he will make payment of the amount as required, either to the Waqf Estate or to the tenderee, in whose favour Lahasa Bazar has been settled so that he may sustain himself and his family even though there may be some private concern of the Waqf Estate.

10. That being the case, I am of the opinion that a citizen cannot be denied his livelihood. The petitioner is sustaining his expenses from the earning as a mechanic in a garage which is in the premises of the Waqf Estate since long. The Hon'ble Supreme Court in the case of **State of U.P v. Charan Singh, Civil Appeal No. 2381 of 2007**, has reiterated the observation of the five-judge's bench of the Court in **Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180**, wherein, emphasis was laid upon the close relationship of life and livelihood and it was opined *inter alia* as follows:

“That, which alone makes it impossible to live, leave aside what makes life livable, must be deemed to be an integral part of the right to life. Deprive a person from his right to livelihood and you shall have deprived him of his life.”



11. The respondents admit the said position and now they have started an encroachment proceeding. The petitioner is ready to make payment of the requisite amount either to the Waqf Estate or to the tenderer so that his survival is not imperiled by rendering him out of work. The Waqf Estate must consider the grievance of the petitioner sympathetically. The above order will be effective only in peculiar facts of the present writ petition.

12. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	14.12.2023
Transmission Date	N.A.

