

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22110 of 2019

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Md. Nasim Ansari, son Late Md. Yaqub, resident of Mohalla Chawk Shikarpur, P.S.- Chawk, Patna City and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Minority Social Welfare Department, Bihar, Patna.
2. The District Magistrate, Patna.
3. Sub-Divisional Officer, Patna City, Patna.
4. Bihar State Sunni Wakf Board through its Chief Executive Officer, 34, Haj Bhawan 2nd Floor Ali Imam Path (Harding Road), Patna- 800001.
5. The Chairman, the Bihar State Sunni Wakf Board, 34, Haj Bhawan, Ali Imam Path (Harding Road), Patna- 800001.
6. The Chief Executive Officer, the Bihar State Sunni Wakf Board, 34, Haj Bhawan, Ali Imam Path, (Harding Road), Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mohammed Abu Haidar, Advocate
For the Respondent/s	:	Mr. Pankaj Kumar Singh, AC to GA- 9
For the Waqf Board	:	Mr. Md. Helal Ahmad, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 18-08-2023

Heard Md. Abu Haider, learned counsel appearing on behalf of the petitioner and Md. Helal Ahmad, learned counsel for the Waqf Board. The State is represented by Mr. Pankaj Kumar Singh, learned AC to GA-9.

2. The petitioner by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeks quashing of the order as contained in Memo no. 2206 dated 22.07.2019 (Annexure-1), issued under the signature of the respondent Chief Executive Officer, Bihar State Sunni



Waqf Board, whereby the respondent Sub-Divisional Officer has been appointed as Administrator and further to quash the order as contained in Memo no. 2821 dated 28.08.2019 (Annexure-2) issued under the signature of the same respondent whereby the Sub-Divisional Officer, Patna City has been directed to provide the financial Budget of the year 2018-19 after cancelling the demand notice no. 2259 dated 23.07.2019.

3. The short facts, which led to the filing of the present writ application is that the petitioner, who happens to be the then Secretary of the Managing Committee, on being aggrieved by the order passed by the respondent Waqf Board disqualifying the petitioner's Management Committee at the fag end of his terms of the office, preferred Waqf Appeal No. 10 of 2014 before the Bihar Waqf Tribunal, Patna (hereinafter referred to as 'the Waqf Tribunal'). However, while the aforesaid appeal was kept pending, on account of non-functioning of the said Tribunal, in the meanwhile, another order came to be passed by the respondent Waqf Board directing the District Magistrate and Senior Superintendent of Police, Patna to take steps for handing over the key of the Waqf Board (Data Nooruddin Shah Waqf Estate No. 1427).

4. It is submitted that apart from the order being



illegal and without jurisdiction, the same was passed behind the back of the petitioner without adhering to the principles of natural justice. He next submits that subsequently the Waqf Tribunal after hearing the parties and taking into consideration the submissions made on behalf of the petitioner vide its order dated 06.07.2017 allowed the Waqf Appeal No. 10 of 2014.

5. Despite the aforesaid order of the Waqf Tribunal, the respondent Waqf Board, passed another order constituting the new Managing Committee vide Resolution No. 13 dated 03.05.2018 and Memo No. 1452 dated 28.05.2018, thus the petitioner left with no option, but to challenge the aforementioned order, filed further appeal, being Waqf Appeal No. 18 of 2018 before the Waqf Tribunal. The learned Waqf Tribunal after having found that the Waqf Board by making a new Managing Committee has superseded the earlier Committee of which the petitioner happens to be the Secretary, without giving opportunity of being heard as prescribed under the law, set aside the order as contained in Resolution No. 13 dated 03.05.2018 passed by the Bihar State Sunni Waqf Board and Memo No. 1452 dated 28.05.2018 issued by the Chef Executive Officer of the Waqf Board. While setting aside the aforesaid order, the Waqf Tribunal has also observed that the action of the Board is



highly deplorable, as the earlier order of the Tribunal has not been followed in its true letter and spirit.

6. It is next submitted that despite the repeated orders passed by the Waqf Tribunal, the respondent Waqf Board in complete disregard again passed the impugned order appointing the respondent Sub-Divisional Officer as an Administrator of the Waqf Estate No. 1427, which is wholly illegal and without jurisdiction, apart from being in violation of the principles of natural justice.

7. During the pendency of the present writ application, a supplementary affidavit has also been filed on behalf of the petitioner and averments have been made therein that the Waqf Board has further appointed a Caretaker and requested the Sub-Divisional Officer, Patna City to hand over the charge of Waqf Estate No. 1427 to the newly Caretaker.

8. Per contra, learned counsel for the respondent Waqf Board while refuting the aforesaid contention has primarily submitted that the present writ application is, at all, not maintainable in view of the efficacious alternative remedy of appeal, as provided under Section 83(2) of the Waqf Act, 1995 and further under Section 65(2) of the Act, there is a provision of revision against the order of the Waqf Tribunal. He also



drawn the attention of this Court to the provisions as prescribed under Section 67(4) of the Act that any order made by the Board under Sub-section (2) thereof shall be final. Provided that any person aggrieved by the order made under Sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal.

9. So far the merit of the case is concerned, he further submits that the petitioner's Managing Committee was granted approval by the Chairman of the Waqf Board only for a period of three years. However, even after expiry of the said period, no step has ever been taken by the petitioner for further extension of the period of his Committee nor the charge was handed over to the Waqf Board, although it was the duty of the petitioner to do so, but he failed to discharge his statutory obligation.

10. He lastly submits that the arrangement has been made only for a stop gap and no final decision with regard to the constitution of the Managing Committee has been taken.

11. Considering the submissions made on behalf of the parties, *prima facie*, it is evident and well settled in law that the existence of alternative remedy cannot be treated as absolute bar to entertain writ petition, so as to amount to denudation of the power of the High Court under Articles 226/227 of the



Constitution of India, especially when the order is wholly without jurisdiction or there is violation of the fundamental rights or when the order impugned is in complete disregard to the principles of natural justice.

12. This Court has also gone through the order impugned passed by the Waqf Board, which, *prima facie*, demonstrates that before passing such order, the petitioner has neither been heard nor provided any opportunity of hearing. A query has been made by this Court to the learned counsel, who appears on behalf of the Waqf Board, as to whether the petitioner has been provided any opportunity of hearing before passing the impugned order, he fairly submits that since it is an interim arrangement, therefore, the petitioner was not required to be heard, as that was not final in nature.

13. Needless to observe that any order, which is prejudicial to the right and entitlement to a person, must be followed by the principles of natural justice and moreover, despite the repeated order passed by the learned Waqf Tribunal that before making any new Managing Committee or any arrangement, the opportunity of being heard must be given to the petitioner, which has not at all been followed. The Tribunal has also condemned such action of the Waqf Board.



14. Considering the facts that before passing the impugned orders, which is quite prejudicial to the right and interest, the petitioner has not been provided any opportunity of hearing nor he has been noticed, this Court has left with no option, but to set aside the impugned orders as contained in Memo no. 2206 dated 22.07.2019 (Annexure-1), as also the order as contained in Memo no. 2821 dated 28.08.2019 (Annexure-2) and other consequential order. The matter is remitted to the Waqf Board with a direction to issue fresh notice to the petitioner and allow him sufficient time to place his case and after providing an opportunity of hearing to all the stake holders, pass a reasoned and speaking order.

15. The aforesaid exercise must be completed by the Waqf Board within a period of eight weeks from the date of receipt/production of a copy of this order.

16. Accordingly, the present writ application stands disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2023
Transmission Date	NA

