

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5637 of 2023

Md. Khurshid Alam Son of Late Sadre Alam, Resident of New Patliputra,
P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Minority Welfare, Government of Bihar, Patna.
2. The Chairman, Bihar State Sunni Waqf Board, Patna.
3. The Chief Executive Officer, Bihar State Sunni Waqf Board, Patna.
4. Md. Azim S/o not known to the petitioner, R/o Flat No. 405, Ahmad Hussain Complex, Exhibition Road, Patna 800001, Ex-Secretary Managing Committee Dargah Hazrat Shah Jalal Shaheed. Waqf No. 663

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Khurshid Alam (In-Person) Mr. Majid Mahboob Khan, Advocate Mr. Amit Narayan, Advocate
For the State	:	Mr. Nalin Bilochan Tiwary, AC to GA-9
For the Waqf	:	Mr. Helal Ahmad, Advocate Mr. Ajaz Akhtar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

9 20-08-2024 Heard Mr. Md. Khurshid Alam who is appearing in-

person, Mr. Md. Ajaz Akhtar for the Waqf Board and Mr.

Nalin Bilochan Tiwary, learned AC to GA-9.

2. The present writ petition has been preferred for
the grant of following relief/s:-

*A. For issuance of an appropriate
writ order/direction to setting aside the
Memo No. 5262 dated 14.12.2022 issued
by the Chief Executive Officer, the Bihar
State Sunni Waqf Board, Patna i.e.
Respondent No-3, whereby Managing*



Committee of Waqf Estate No. 663 (Patna High Court Mazar Committee) has been dissolved and further directed to hand over the charge of Management to the authorized employee of the Board.

B. For setting aside the office order as contained in memo No. 5280 dated 15.12.2022 issued under the signature of Respondent No-3, whereby three employees of the Board were given charge of management of Waqf Estate No- 663.

C. For direction to the respondent authorities to get enquire the entire tenure of private respondent No-4 as Secretary of Waqf Estate No- 663 especially regarding financial affairs.

D. For stay the operation of Memo No. 5262 dated 14.12.2022 and office order contained in memo No. 5280 dated 15.12.2022, both are issued by the Chief Executive Officer, Bihar State Sunni Waqf Board, Patna and allow the petitioner to



function as President till disposal of writ application.

E. For appropriate direction to the Board to produce the resolution Book of the Waqf No- 663 before the Hon'ble Court.

F. For any other relief(s) for which petitioner deserves in the opinion of this Hon'ble Court in the light of facts and circumstances of the case.”

3. Mr. Md. Khurshid Alam was part of the earlier committee as its President. The matter relates to Waqf Estate No. 663 (popularly known as Patna High Court ‘Mazar’ Committee) (henceforth for short ‘the Mazar’) situated near Patna High Court at Bailey Road, Patna.

4. The case of the petitioner who is a practicing Advocate of Patna High Court is that after taking over as its President, he started putting plugs in the holes which irritated the Secretary (Respondent No. 4) who was also appointed along with him in the Committee. He submits that the Secretary appointed a driver for his personal use but payment was being made through ‘the Mazar’. He also appointed two other employees without any proper advertisement.



5. Mr. Md. Alam submits that it was informed to the Bihar State Sunni Waqf Board, Patna (henceforth for short 'the Board') but in turn, they ensured that the other committee members resigns *en masse* which followed the letter/order in question by which he was informed by the Chief Executive Officer of 'the Board' vide letter no. 5262 dated 14.12.2022 (Annexure-7 to the petition) informing that 2/3 members of the committee have resigned and as such, the committee now stands dissolved. Accordingly, he was asked to hand over charges to the authorized Officer of the said '*Mazar*'.

6. Mr. Md. Alam submits that his prayer is/are two folds:

(i) to constitute a proper committee in accordance with the Waqf Act, 1995 (henceforth for short 'the Act');

(ii) to direct the Waqf Board to look into the illegalities that is/are being committed by the authorized officers/members (Mutawallis) of the said Mazar.

7. Mr. Alam took this Court to memo no. 3634 dated 21.12.2022 issued by the Joint Secretary-cum-Director of the



Minority Welfare Department, Bihar, Patna addressed to the Chief Executive Officer of the Waqf Board raising the issue of the petitioner and directing him to look into the matter and do the needful at an earliest. His submission is that despite the letter being of 21.12.2022, they have chosen to look the other way which clearly shows that they are actually hand in glove with the ex-Secretary.

8. The Waqf Board has filed its counter-affidavit and a perusal of paragraph-23 (which is reply to the paragraph-25 relating to the letter of the Joint Secretary), it is clear that 'the Board' is not acting in accordance with law and the letters/communication/directives of the Minority Welfare Department is being defied. It is important to quote paragraph-23 of the counter-affidavit which read as follows:-

“23. That in reply to statement made in paragraphs No. 25 of the writ application it is humbly submitted that answering respondents are very much committed to their duties and obligations and have been working for protection and preservation of waqf properties as per the provisions of the Waqf Act, 1995



(Amendment Act, 2013).”

9. To the allegations made by the petitioner in paragraph-13 to 15, again the reply is vague inasmuch as it has put the ball in the court of the petitioner alleging that due to serious dispute between the members of the Managing Committee, it resulted into resignation of majority of the members.

10. The petitioner is a prominent citizen, a practicing lawyer of the Patna High Court and during his tenure as the President, he looked into the anomalies and requested ‘the Board’ to act. As ‘the Board’ chose not to take cognizance of the matter, the petitioner approached the Minority Welfare Department, Bihar and the letter issued by its Joint Secretary (Annexure-9) is testimony to it. It seems that the Waqf Board is deliberately trying to protect the illegalities being committed in the activities of the ‘Mazar’ as it has not acted for the past two years despite being sounded by the Department vide letter no. 5262 dated 14.12.2022.

11. It is also a matter of concern that despite ‘the Board’ being accountable to the Minority Welfare Department, Bihar, Patna, it did not pursued the matter for the last two years after the issuance of letter no. 5262 dated



14.12.2022 under the signature of its Joint Secretary but the Department has not taken any follow up action. It is a wake up call for them too.

12. In that background, considering the submissions/going through the records as also the cryptic counter-affidavit that has been filed on behalf of the Waqf Board, this Court is convinced that some directions need to be issued.

13. Though, there was no proper assistance on behalf of the Waqf Board, learned State counsel, at this stage, pointed out that a new committee has already been constituted by 'the Waqf Board' as would reflect from Annexure-R/2 of its counter-affidavit. A perusal of it shows that vide letter no. 1430 dated 18.05.2023, a committee has been constituted with Janab Equbal Haidar Khan as its President and Janab Md. Tahseen Nadeem as its Secretary beside 12 other members who have been incorporated in the committee. It has been constituted for a period of three years from the date of issue.

14. As this constitution of the Committee has not been challenged by the petitioner, prayer for the constitution of committee goes. However, since this Court has taken note of the serious irregularities/illegalities which has been



committed by the earlier Committee as pointed out by the petitioner, it would be appropriate that the criminal antecedent of the President/Secretary as also the other office bearers of the present committee is/are ascertained specially whether any of them have criminal charge of misappropriation of public money.

15. The Waqf Board is duty bound to look into the matter and request all the local Police Stations under whose jurisdiction these office bearers reside to check their criminal antecedent with further request to the Senior Superintendent of Police, Patna to direct all the Police Stations (so requested) to furnish information.

16. In case, any of them is/are having criminal antecedent, the Waqf Board is duty bound to take appropriate steps for their exclusion from the committee in accordance with law after putting the said office bearer on notice.

17. So far as the illegalities part is concerned, the Joint Secretary of the Department gave direction on 21.12.2022 which has been kept in the cupboard by the Waqf Board as the reply in its counter-affidavit clearly shows that it has tried to by-pass the said allegation. The Waqf Board is duty bound to inquire into the matter and submit a proper



report to the Minority Welfare Department, Bihar, Patna replying to the letter no. 5262 dated 14.12.2022.

18. The petitioner who is the author of the allegation is also entitled to a copy of the enquiry report. This order has been passed in the presence of learned counsel appearing on behalf of the Waqf Board and he is duty bound to apprise the concerned respondent about it.

19. The petitioner will also be filing a representation before the Waqf Board detailing out all the illegalities that is/are being committed in the Mazar Site. This Court can only observe that the kind of activities that keeps going on in 'the Mazar' premises is a matter of concern and also records its deep anguish. It needs immediate attention of the authorities.

20. If the petitioner prefers representation in next four weeks, the Board is duty bound to look into each and every point raised by the petitioner and constitute an enquiry team of independent members to submit report. On the report so submitted, it is again duty bound to provide copies of enquiry report as also the Action Taken Report both to the petitioner as also the Minority Welfare Department, Bihar, Patna.

21. The entire exercise is to be completed within



three months of the representation preferred by the petitioner.

22. The writ petition stands disposed of with the aforesaid direction/observation.

23. Let a copy of the order be communicated to the Principal Secretary of the Minority Welfare Department, Bihar, Patna for his perusal and appropriate action.

(Rajiv Roy, J)

Adnan/-

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