

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7216 of 2022

Hazrat Azizullah Shah Aulia Mazaar Muquaddas Pak Charitable Trust, Village and Post-Nateya, P.S.-Kudra, District-Kaimur at Bhabhua through its Settler Sufi Rustam Ali Chisti Nizami, aged about 46 years, male, son of Late Sufi Abdul Aziz Chisti Nizami, resident of Mohalla-Shafiganj, Ward No. 15, Mauza-Awari, Mohania, P.S.-Mohania, District-Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. The Bihar State Sunni Waqf Board through its Chairman having its office at 2nd Floor, 34, Ali Imam Path, Haj Bhavan, Harding Road, Patna.
2. The Chief Executive Officer, the Bihar State Sunni Waqf Board having its office at 2nd Floor, 34, Ali Imam Path, Haj Bhawan, Harding Road, Patna.
3. The District Magistrate, Kaimur at Bhabhua.
4. The District Minority Welfare Officer, Kaimur at Bhabhua.
5. The District Aukaf Committee, Kaimur at Bhabhua through its Secretary.
6. Nizamuddin Ansari, son of Subhan Ansari, resident of Village and P.O.-Turki, P.S.-Kudra, District-Kaimur.
7. Md. Taruph Hussain, son of Hanif Ansari, resident of Village and P.O.-Khaira, P.S.-Sonhan, District-Kaimur.
8. Md. Hsamuddin Ansari, son of Rasool Ansari, resident of Village and P.O.-Turki, P.S.-Kudra, District-Kaimur.
9. Sabihuddin Khan, son of Maskur Khan, resident of Village-Mustafapur, P.O.-Jigawa, P.S.-Dinara, District-Rohtas.
10. Gaffar Ansari, son of Jamir Ansari, resident of Village and P.O.-Sohagi, P.S.-Nasiganj, District-Rohtas.
11. Kamrulain Khan, son of Julkrain Khan, resident of Village-Mustafapur, P.O.-Jigana, P.S.-Dinara, District-Rohtas.
12. Islam Ansari, son of Nabtuadin Ansari, resident of Village Gusari, Gali-Shamim Khan Road, P.O.-Belaur, Police Station-Belaur, District-Hawarah (West Bengal), PIN-711202.
13. Md. Niyazuddin Ansari, son of Manzoor Ansari, resident of Village and P.O.-Turki, P.S.-Kudra, District-Kaimur.
14. Md. Balister Siddique, son of Inayat Siddique, resident of Village-Mati, P.O.-Akhtiyarpur, P.S.-Kargahar, District-Rohtas.
15. Md. Nayeem Ansari, son of Amin Ansari, resident of Gusari, Gali Mainuddin Ansari Road, P.O.-Belaur, Police Station-Belaur, District-Hawrah (West Bengal) PIN-711202.
16. Gulam Mohamad, son of Rahmatulah Ansari, resident of Village-Gangawa Liya, P.O.-Basani, P.S.-Kudra, District-Kaimur.

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr.Uday Pratap Singh, Advocate.
For the State : Mr.Sita Ram Yadav, GP-16.
Mr. Jitendra Kumar, AC to GP-16.
For respondent nos. 1&2: Mr. Md. Helal Ahmad, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 29-03-2024

Heard Mr. Uday Pratap Singh, learned counsel appearing on behalf of the petitioner; Mr. Sita Ram Yadav, learned GP-16 along with Mr. Jitendra Kumar, learned AC to GP-16 for the State and Mr. Md. Helal Ahmad, learned counsel for the respondent nos. 1 and 2.

2. Mr. Uday Pratap Singh, learned counsel appearing on behalf of the petitioner submitted that the order passed by the Waqf Board is not in accordance with the provision of the Waqf Act, 1995 as no specific finding or information has been given as to whether before exercising its jurisdiction, the property concerned was forwarded to the State Government on receipt of a report under Sub Section 3 of Section 4 of the Waqf Act so that in terms of provision contained in Section 5 of the Act, the land in dispute would have been examined in terms of Sub Section 3 of Section 5 by the Revenue Authorities with respect to the property to be added in the list of Auqaf. He further submitted that the Tribunal has also not recorded its satisfaction in terms of Sub Section 3 of Section 40 which prescribes that where the Board has any reason to



believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 or under the Societies Registration Act, 1860 or under any other Act, is waqf property and the Board was required to hold an inquiry in regard to the property which the petitioner has claimed with respect to Khata No. 96, Khesra No. 818, measuring total area 80 decimal and another plot appertaining to Khata No. 89, Khesra No. 819 also measuring 80 decimal. The basic requirement have not been fulfilled and in absence of any satisfaction or reason to believe that the property belonging to the petitioner is a Waqf property and without giving any show cause as to why such property should not be registered, the order dated 08.03.2019 passed by the Waqf Board directing the District Minority Welfare Officer to constitute a Managing Committee is not sustainable in the eye of law.

3. Mr. Md. Helal Ahmad, learned counsel appearing on behalf of the Waqf Board submitted that the property was registered with the Waqf Board on 31.01.2017 and he has no instruction with respect to as to whether there has been any compliance of Sub Section 3 of Section 4 and the property has been added in the list of Auqaf as per the provision of the Waqf Act. Learned counsel further submitted that there are disputed



question of facts and further submitted that the order passed by the Waqf Board is a reasoned order based on records and discussion made therein. The Board had directed the District Minority Welfare Officer to constitute a Managing Committee vide order dated 08.03.2019 and the petitioner instead of availing efficacious remedy as per the provision under Section 83(2) of the Waqf Act before the learned Bihar Waqf Tribunal has filed the present writ petition which is not maintainable.

4. Mr. Jitendra Kumar, learned AC to GP-16 for the State also admitting the fact that disputed question of facts has been raised by the petitioner, at the same time, pointed out that the basic requirement has not been fulfilled by the Waqf Board so far as consideration of the revenue records which are maintained at the circle level with respect to the land in question claimed by the petitioner, the District Magistrate may also be given opportunity before the Tribunal to place the revenue records for proper adjudication of the claim of the petitioner.

5. Having considered the rival submissions made on behalf of the parties and the question raised by the petitioner and the rival parties as has been enumerated in the above paragraphs, I am of the opinion that in exercise of power conferred under Article 226 of the Constitution, it would not be



proper to deal with the disputed question of facts when the remedy lies before the Bihar Waqf Tribunal. The petitioner, if so advised, may approach the Bihar Waqf Tribunal for redressal of his relief as prayed for in the present writ petition.

6. The District Magistrate is directed to submit Revenue record based affidavit before the Tribunal and may also confirm about any action taken in respect of the land claimed by the petitioner described in the above paragraphs that regarding details of property after following due prescribed procedure a report under Sub Section 4 of Section 4 of the Act, 1995 has been forwarded to the State Government has been added in the list of ‘Auqaf’. In case prescribed procedure has not been followed, the impugned order passed by the Waqf Board shall vitiate in the eye of law.

7. The Writ petition, accordingly, stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	01.04.2024
Transmission Date	N.A.

