
(2001) 08 PAT CK 0074
In the Patna High Court
Case No : CWJC No. 9610 of 2001

Islamic Council

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Waqf Act, 1954 — Section 12
Waqf Act, 1995 — Section 13, 13(2), 15

Citation : (2001) 4 PLJR 48

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Farooque Moazzam, for the Appellant; Ragib Ahsan, for Respondent Nos. 5, 6 and 7, S.A. Nasar Warsi, Obaidur Rahman for Respondent No. 10 and S.A. Hussain, for State, for the Respondent

Judgement

1. As of date the court will need to take a report from the registry as to who have entered appearance in response to notices served. Thus, let the registry put up a report on service. Today, entrance has been entered on behalf of Respondent No. 10 Janab Husan Ahmad Quadri describing himself as a Member Secretary Jamat-Ulma-Hind, Patna (through Mr. S.A. Nasar Warsi, Advocate).

2. The office will take notice that today an affidavit affirmed on 13 August 2001 has been filed by the Bihar State Sunni Wakf Board. The affidavit has been sworn by Md. Nehalluddin describing himself as a Chairman of Bihar State Sunni Wakf Board, Harding Road, Patna. He happens to be Respondent No. 6 and, thus he has entered appearance in the case.

3. With the aforesaid affidavit and on the records presented, it has been stated, in effect, that the Bihar State Sunni Wakf Board had intimated the District Magistrate, Patna as early as February 2001 expressing concern on the unauthorised occupation and constructions on "Wakf estate No. 663, Mazar Patna High Court, Patna". The District Magistrate was reminded by another communication dated 31 July 2001 that he may stop the illegal construction on

"Wakf land of High Court Mazar, Wakf No. 663, Patna".

4. On this learned Counsel for the State Mr. S.A. Hussain, S.C. 6, has stated that he had a meeting with the District Magistrate, Patna and the Circle Officer and he had been intimated that the illegal construction being carried on the plot referred to had been stopped and on similar directions which were given by the Bihar State Sunni Wakf Board, also, on 13.7.2001. Learned Counsel for the State states that he drew the attention of the District Magistrate that even, today this morning the illegal construction work, apparently, was continuing. He stated that he was informed by the Circle Officer of the Police that the work has been stopped forthwith, and, today, two masons engaged in the constructions work (whoever may have ordered it so) have been detained by the police.

5. Regard being had to the circumstances in re the Government Order S.O-A.S.K-10-10127/93 dated 16 November 1995, this government order itself declares that the life of the Board for 5 years. On 27.12.1995 the Government of India Gazette announced the Wakf Act 1995 to take effect from 1 January 1996. There is consensus at the Bar whether for the Petitioner or Respondents in pointing out the differences between Section 12 of the Wakf Act 1954 and Section 15 of the Wakf Act 1995. There is an issue in the present writ Petition whether the Board within the meaning of Section 15 of the Wakf Act 1995 continues or not.

6. Learned Counsel for the State has stated that the matter is engaging the attention of the State and the government was contemplating one composite Board within the meaning of Section 13. Lately, it is considering the aspect whether there should be a Board separately for Sunni Wakfs and Shiya Wakfs. In this regard, if two Boards are to be constituted, the law enjoins that the Shiya Wakf in a State will need to have numbers more than 15% of all the Wakfs in the State or the income of the properties of the Shiya Wakfs will need to constitute more than 15% of the total income of properties of all the Wakfs in the State. Let this information as is referred to in Sub-section (2) of Section 13 be placed before the Court.

7. All parties at the Bar jointly pray that this matter may come up before the Court after ten days.

8. Put up on 27 August 2001 in the supplementary list.