

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.283 of 2021

Syed Mukarram Ali Son of Late Syed Irteza Hussain Resident of 132, Diwan
Mohalla, Dulli Ghat, P.S.- Khajekalan, District- Patna.

... .. Petitioner/s

Versus

1. The Bihar State Shia Waqf Board Bihar, Patna through the Chief Executive Officer, Haj Bhawan, 34- Ali Imam Path, Harding Road, District- Patna.
2. The Chairman Bihar State Shia Waqf Board, Bihar, Patna Haj Bhawan, 34- Ali Imam Path, Harding Road, District- Patna.
3. The Chief Executive Officer Bihar State Shia Waqf Board, Haj Bhawan, 34- Ali Imam Path, Harding Road, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rashid Izhar, Advocate
For the Respondent-Board: Mr. Md. Anjum Akhtar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 24-12-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the notification dated 06.08.2020 issued by the Bihar State Shia Waqf Board (hereinafter referred to as the “Board”), whereby and whereunder the petitioner has been removed from Mutawalliship of the waqf estate in question and an Assistant of the Board has been appointed as the Manager of the said waqf



estate. The petitioner has also sought quashing of the Board's resolution no. 10 dated 17.06.2020, whereby and whereunder the petitioner has been removed from the Mutawalliship of the waqf estate in question.

3. The brief facts of the case are that the petitioner was appointed as Mutawalli of Bibi Fatma and others waqf estate, bearing no. 15/Patna situated at Diwan Mohalla, Dulli Ghat, Patna City in the year 1994, being the successor and heir of the dedicator. Without going into the details, it would suffice to state that it is the contention of the petitioner that since his appointment as Mutawalli of the waqf estate in question, he has been diligently discharging his duties for consolidation and maintenance of the waqf estate and no complaint has ever been made against the petitioner since the past 26 years. In the year 2019, the petitioner had replaced the old gate by a new gate at the entrance of the mosque of the waqf estate in question and was also getting minor repair works done with regard to the front wall of the Imambara. It is submitted that in the course of time the waqf property in question had become valuable, hence many people were having evil eye on the property of the waqf estate. It is also the allegation of the petitioner that the respondent Bihar State Shia Waqf Board has already sold/



permanently leased out many valuable waqf properties in Patna illegally to private builders despite refusal of permission to do so by the Government of Bihar, hence the respondent Board had similar plans with regard to the present waqf estate in question but on account of the opposition of the petitioner, the ill motive of the respondent Board could not materialize, hence the respondent Board hatched a plan and consequently issued a show cause notice dated 29.04.2020 to the petitioner, seeking explanation regarding the illegal construction being made by the petitioner as also directing him to stop the construction work. The petitioner had then filed his reply dated 04.05.2020, stating therein that the petitioner was only getting minor repairing works done and the Masjid and Imamwara of the Waqf estate were being white washed, hence there was no requirement for seeking permission for maintenance/repair work under any Act/Rule/Regulation. The petitioner had thereafter, received no communication, however, subsequently the respondent Board had circumspectly behind the back of the petitioner conducted an enquiry. On 16.06.2020 the Government of Bihar had issued a gazette notification whereby and whereunder the election of the respondent Board was notified and immediately on the next day the respondent Board had surprisingly held a meeting on



17.06.2020 and vide resolution no. 10 had taken a decision to remove the petitioner from the Mutawalliship of Bibi Fatma and other waqf estate no. 15/Patna, under section 64(a) & (g) of the Waqf Act, 1995 and after lapse of two months a notification dated 06.08.2020, regarding the same, was issued and forwarded to the petitioner.

4. The learned counsel for the petitioner has referred to Section 64 of the Waqf Act, 1995 to demonstrate the grounds on which the respondent Board can remove a Mutawalli, sub-clause (a) & (g) whereof are reproduced herein below:-

“64. Removal of mutawalli:-

(a) has been convicted more than once of an offence punishable under section 61; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; ”

5. The learned counsel for the petitioner has now referred to the show cause notice dated 29.04.2020, which reads as follows:-



“विषय:- वक्फ भूमि पर अवैध निर्माण करने के संबंध में

बोर्ड को यह सूचना प्राप्त है कि आपके द्वारा उक्त वक्फ के भूमि पर अवैध निर्माण किया जा रहा है, जबकि बोर्ड संकल्प सं0-35(n) दिनांक 12.02.2020 एवं कार्यालय पत्रांक 469 दिनांक 16.03.2020 के द्वारा निदेश दिया गया की वक्फ विकास हेतु Porposed एवं Plan बोर्ड को उपलब्ध कराये। परन्तु आपने बोर्ड के आदेश की अवहेलना करते हुए उक्त वक्फ के जमीन पर अवैध ढंग से निर्माण कार्य प्रारम्भ कर दिया। जो एक गंभीर मामला है।

आपको निदेश दिया जाता है कि हो रहे निर्माण कार्य को अचलंब रोके और वस्तुस्थिति की जानकारी 2 दिनों के अन्दर बोर्ड को उपलब्ध कराये। अन्यथा वक्फ अधिनियम 1995 की धारा 64 के तहत कार्यवाई करते हुए मोतवल्ली पद से हटा दिया जायेगा।“

6. Thus, it is submitted by the learned counsel for the petitioner that the only allegation levelled against the petitioner was that of engaging in illegal construction work. Nonetheless, it is submitted that the petitioner had given an appropriate reply as aforesaid, however, the respondent Board vide resolution no. 10 dated 17.06.2020 has resolved to remove the petitioner from Mutawalliship of the waqf estate in question and has then issued a notification dated 06.08.2020, whereby and whereunder the petitioner has been informed that he has been removed as Mutawalli of the waqf estate in question under section 64 (a) & (g) of the Waqf Act, 1995. The learned counsel for the petitioner has submitted that a bare perusal of Section 64(a) & (g) of the Waqf Act, 1995 would show that the grounds for removal of a Mutawalli is that either a Mutawalli has been convicted more than once for an offence punishable under Section 61 or he has



failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by section 46 (2) of the Waqf Act, 1995, however, in the show cause notice dated 29.04.2020, issued to the petitioner, no such allegation has been levelled and it has been merely mentioned that the petitioner is engaging in illegal construction, hence it is submitted that the impugned order dated 06.08.2020 passed by the respondent Board is perverse and fit to be set aside inasmuch as no notice has been given to the petitioner with regard to the grounds mentioned under Section 64(a) & (g) of the Waqf Act, 1995, warranting removal of the petitioner as a Mutawalli of the Waqf Estate in question, thus resulting in violation of the principles of natural justice. It is also submitted that enquiry, if any, has been held behind the back of the petitioner, hence the same also stands vitiated in the eyes of law, on the ground of non-compliance of the principles of natural justice. Lastly, it is submitted that the alternative remedy of approaching the tribunal under Section 83 of the Waqf Act, 1995 is not an efficacious remedy and would not be a bar to the present writ petition being entertained by this Court under Article 226 of the Constitution of India inasmuch as the



principles of natural justice have been violated in the present case. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of *Whirlpool Corporation v. Registrar of Trade Marks Mumbai & Others*, reported in *(1998) 8 SCC 1*.

7. Per contra, the learned counsel for the respondent Board has at the outset submitted that the petitioner has got an alternative remedy under Section 83 of the Waqf Act, 1995 and he can very well agitate his grievances before the Bihar Waqf Tribunal, hence the present writ petition is not maintainable. In this connection, the learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of *Board of Wakf, West Bengal vs. Anis Fatma Begum & Anr*, reported in *(2010) 14 SCC 588*. The learned counsel for the petitioner has further submitted that the petitioner had not been discharging his duties smoothly and properly since the date of his appointment as Mutawalli resulting in the respondent Board issuing several notices to the petitioner for submitting yearly statement of accounts and budget from the year 1998-99 to 2009-2010 and onwards but the same were not submitted by the petitioner. It is further submitted that on 15.02.2020, the Assistant-cum-Inspector of the respondent Board had inspected



the waqf estate in question and had found that the petitioner had committed many irregularities like illegal tenancy, illegal occupancy, misappropriation of rental income and concealment of yearly income of the Waqf property. The Assistant-cum-Inspector of the respondent Board had then submitted an enquiry report dated 24.02.2020. Thereafter, the respondent Board had issued a letter dated 28.02.2020 to the petitioner to submit the statement of actual income of the waqf property, failing which appropriate action would be taken against him. The respondent Board had then vide letter dated 29.04.2020, issued a show cause to the petitioner with regard to illegal construction over the waqf property in question. An office order dated 10.06.2020 was also issued by the respondent Board for inspection of the waqf property under Section 64 and 71 of the Waqf Act, 1995, whereafter the Assistant-cum-Inspector of the respondent Board had inspected the property in question on 15.06.2020 as also had inspected the records pertaining to the statement of accounts and had found several irregularities, whereupon he had submitted an enquiry report dated 16.06.2020, with a recommendation to take legal action against the petitioner. The respondent Board had then considered the aforesaid enquiry report dated 16.06.2020 and had taken a



decision to remove the petitioner from the post of Mutawalli of the Waqf in question. It is thus submitted that there is no illegality in the order passed by the respondent Board dated 17.06.2020, removing the petitioner from the Mutawalliship of the Waqf estate in question.

8. I have heard the learned counsel for the parties and perused the materials on record from which this Court finds that apart from the show cause notice dated 29.04.2020, one another show cause notice dated 28.02.2020 was issued to the petitioner wherein the petitioner was called upon to submit his show cause reply to the allegation that in the statement of accounts, the annual income has been shown to be only a sum of Rs. 6000/- whereas from the enquiry report submitted by the Assistant-cum-Inspector, the annual income totals upto a sum of Rs. 72,000/- and it was also communicated to the petitioner that under Sections 50 & 64 of the Waqf Act, 1995, it is the duty of the Mutawalli to submit correct statement of accounts of the waqf property, failing which the Mutawalli can be removed. This Court also finds that an enquiry was set up by the respondent Board and a notice dated 12.06.2020 was issued to the petitioner under sections 71 and 64 of the Waqf Act, 1995 informing the petitioner that the Assistant-cum-Inspector Shri



Mirza Saqib Hussain has been duly authorized to hold enquiry of the waqf estate in question, hence the petitioner should remain present at the place, date and time referred to in the said notice with relevant documents, papers and witnesses and in support of the said notice being dispatched, postal receipt of the Indian Postal Department has also been enclosed with the counter affidavit filed by the respondent Board. It appears that an enquiry was held on 15.06.2020 where the petitioner was also present and several irregularities were found, including furnishing of false statement of accounts, as is apparent from the enquiry report dated 16.06.2020. Considering the said enquiry report dated 16.06.2020, the respondent Board had taken a decision dated 17.06.2020 to remove the petitioner from Mutawalliship of the Waqf estate in question.

9. Having considered the facts and circumstances of the case and having taken into account the submissions made by the learned counsel for the parties, this Court finds that the argument of the learned counsel for the petitioner to the effect that the impugned notification dated 06.08.2020 or for that matter the decision of the respondent Board dated 17.06.2020, are not based on the grounds prescribed in section 64 (a) & (g) of the Waqf Act, 1995, required to be fulfilled for removal of a



Mutawalli, since no notice has been given to the petitioner with regard to the grounds mentioned under Section 64(a) & (g) of the Waqf Act, 1995, warranting removal of the petitioner as a Mutawalli of the Waqf Estate in question, is misconceived inasmuch as the respondent Board had not only issued a show cause notice dated 29.04.2020 but had also issued a show cause notice dated 28.02.2020, wherein specific allegations were levelled against the petitioner of fudging the statement of accounts and moreover, an enquiry is also stated to have been held in presence of the petitioner on 15.06.2020, after due notice to him vide notice dated 12.06.2020 and only then the enquiry report dated 16.06.2020 was submitted by the Assistant-cum-Inspector of the respondent Board finding several irregularities in connection with management of the Waqf estate in question including furnishing of false statement of accounts by the petitioner. It may be mentioned that though the petitioner in his rejoinder affidavit has denied issuance of show cause notice dated 28.02.2020 as also the notice of enquiry dated 12.06.2020 but then such issues are disputed question of facts which cannot be gone into in a writ petition under Article 226 of the Constitution of India.

10. At this juncture, it would be relevant to reproduce



herein below the findings arrived at in the enquiry report dated

16.06.2020:-

“जाँच से पहले मेरे द्वारा मोतवल्ली श्री सैयद मोकर्रम अली को जाँच की सूचना फॉर्म-56 (Rule 51 (3)) में रजिस्टर्ड डाक- EF7590752631N से भेजी गई थी।

जाँच स्थल पर उक्त वक्फ़ स्टेट के मोतवल्ली, सैयद मोकर्रम अली पहले से मौजूद थे। उक्त की घेराबन्दी की हुई कुछ दिवारें टुटी हुई हैं तथा उन्हें तोड़ कर नवनिर्माण किया जा रहा था। जब मैंने मोतवल्ली से हो रहे मरम्मत एवं नवनिर्माण कराने हेतु बोर्ड का स्वीकृति पत्र माँगा तो उन्होंने बोर्ड द्वारा भेजे गए पत्रांक 469 दिनांक 16.03.2020 एवं बोर्ड संकल्प सं०-35(m) दिनांक 12.02.2020 दिखाया। जिस पत्र में बोर्ड द्वारा वक्फ़ विकास हेतु प्रस्तावना एवं योजना उपलब्ध कराने को कहा गया था, परन्तु मोतवल्ली श्री मोकर्रम अली द्वारा किसी भी तरह का कोई प्रस्तावना एवं योजना उपलब्ध नहीं कराया गया था निर्माण कार्य को जारी रखा गया जो वक्फ़ अधिनियम 1995 की धारा 50(क) का उलंघन है।

उक्त मकान में तीन किरायेदार हैं (1). मोज़म्मिल हुसैन पिता-अशफ़ाक हुसैन किराया 1000/-रु० प्रति माह, (2). मो० अशरफ़ पिता-हबीबुल रहमान किराया 1500 /- रु० प्रति माह, (3) मनन अंसारी (दुकान) किराया 3500 /- रु० प्रति माह । उक्त वक्फ़ स्टेट सालाना आय 72,000 /- रु० है परन्तु मोतवल्ली द्वारा उपलब्ध कराए गए Statement of Account में सालाना आय मात्र 6,000/- रु० दर्शाया गया है। मोतवल्ली द्वारा बोर्ड से उक्त वक्फ़ स्टेट की आमदनी छुपाई जा रही है जो वक्फ़ अधिनियम 1995 की धारा 46 एवं 61 (ख) का उलंघन है।

जाँच के दौरान जब मैं किरायेदारों से बात करनी चाही तो मोतवल्ली द्वारा बार बार रोका जा रहा था एवं किरायादारों को धमकी दी जा रही थी कोई कुछ नहीं बताएगा जो कुछ गुना है स्वयं मोतवल्ली से पुछा जाए। मोतवल्ली द्वारा जाँच में कोई सहयोग नहीं किया गया तथा विघ्न डाली गई।

मस्जिद के दक्षिण तरफ के मकान एवं दुकान को मोतवल्ली ने अपनी निजी सम्पत्ति बताई है तथा उस मकान एवं दुकान से होने वाले आय को निजी खर्च में उपयोग करते हैं।

उपर्युक्त विवेचन से स्पष्ट होता है कि मोतवल्ली द्वारा लगातार वक्फ़ अधिनियम 1995 की धारा 46, 50, 61 एवं 64 (क). (ड) का उलंघन किया जा



रहा है।

अतः मोतवल्ली के विरुद्ध वक्फ अधिनियम 1995 की धारा 64 के अन्तर्गत कार्रवाई की जा सकती है।

विश्वासभाजून
(मिर्जा साकिब हुसैन)
सहायक-सह-निरीक्षक”

11. It would also be relevant to reproduce section 64 of the Waqf Act, 1995 herein below:-

“64. Removal of mutawalli.—(1) Notwithstanding anything contained in any other law or the deed of [waqf], the Board may remove a mutawalli from his office if such mutawalli—

(a) has been convicted more than once of an offence punishable under section 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as paid legal practitioner on behalf of, or against, the [waqf]; or



(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any [waqf] property, or in any contract made with, or any work being done for, the [waqf] or is in arrears in respect of any sum due by him to such [waqf]; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the [waqf] or in respect of any money or other [waqf] property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the [waqf].

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the [waqf] property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under subsection (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of subsection (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tri-



bunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the [waqf], by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the 1 [waqf] pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the [waqf] and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the [waqf] are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the 1 [waqf] property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the [waqf] property.

(8) A mutawalli of a [waqf] removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that [waqf] for a period of five years from the date of such removal.”

12. It would further be apt to reproduce sections 46 and



50 of the Waqf Act, 1995 herein below:-

“46. *Submission of Accounts of Wakfs—*

(1) Every mutawalli shall keep regular accounts.

(2) Before the 1st day of July next, following the date on which the application referred to in section 36 has been made and thereafter before the 1st day of July in every year, every mutawalli of a [waqf] shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the [waqf] during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the [waqf]:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

50. *Duties of mutawalli.—It shall be the duty of every mutawalli—*

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of [waqf] properties, accounts or records or deeds and documents relating



thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.”

13. A bare perusal of the show cause notice dated 28.02.2020 and the one dated 29.04.2020 as also the enquiry report dated 16.06.2020 would show that the grounds mentioned under section 64 of the Waqf Act, 1995, on which a Mutawalli can be removed from his office definitely exist in the instant case so as to warrant removal of the petitioner from the post of Mutawalliship of the waqf estate in question, though the respondent Board might have referred to a wrong provision of law, in the impugned order dated 06.08.2020, but that shall in no way vitiate the impugned order dated 06.08.2020 or for that matter the resolution of the Board dated 17.06.2020. This Court further finds that neither the allegations levelled in the show cause notice dated 29.04.2020 has been refuted by the petitioner in the present writ petition nor the contents of the enquiry report dated 16.06.2020 have been assailed on merits before this Court.

14. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above in the preceding paragraphs, I do not find any merit in the present writ



petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	10.09.2021
Uploading Date	25.01.2022
Transmission Date	

