

IN THE SUPREME COURT OF INDIA

[S.C.R. ORDER XXI RULE 3 (1) (a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 13033 OF 2021

[Against the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High Court of Judicature at Patna rendered in Civil Writ Jurisdiction Case No. 6751 of 2021.]

**WITH
PRAYER FOR INTERIM RELIEF**

IN THE MATTER OF:-

THE BIHAR STATE SUNNI WAQF BOARD ... PETITIONER

-VERSUS-

THE STATE OF BIHAR & ORS. ... RESPONDENTS

WITH

I.A. NO. OF 2021 : Application for permission to file additional documents not forming part of the record below.

AND WITH

I.A. NO. OF 2021 : Application for exemption from filing certified copy of the impugned judgment and final order dated 03.08.2021.

AND WITH

I.A. NO. Of 2021 : Application for permission to file lengthy List of Dates.

AND WITH

I.A. NO. OF 2021 : Application for exemption from filing Official Translation.

AND WITH

I.A. NO. OF 2021 : Application for exemption from filing Notarised Affidavit.

PAPER BOOK

(PLEASE SEE INDEX INSIDE)

FILED BY: -

EJAZ MAQBOOL, ADVOCATE FOR THE PETITIONER

SYNOPSIS

The Petitioner herein is filing the present Special Leave Petition under Article 136 of the Constitution of India against the Impugned Judgment and Final Order dated August 3, 2021 passed by the Full Bench of the Hon'ble High Court of Judicature at Patna in Civil Writ Jurisdiction Case No. 6751 of 2021. By virtue of the Impugned Judgment, the Hon'ble High Court, in *suo motu* proceedings (which were subsequently registered as a Public Interest Litigation) directed the demolition of the entire structure of the proposed Wakf Bhawan building, which was being constructed in the vicinity of the Hon'ble High Court. It is submitted that while rendering the Impugned Judgment the Hon'ble High Court not only travelled beyond the 4 issues framed by it but also proceeded to direct demolition of the entire structure of the proposed Wakf Bhawan Building, solely due to the reason that the building was in excess of 10 meters of height which was in violation of Bye Law No. 21 of the Bihar Building Bye-Laws, 2014. It is relevant to mention that the direction for demolition of the entire building was given even though the Petitioner Wakf Board as well as all the State Authorities had themselves agreed to demolish the offending portion of the building (i.e. to bring the building within the height of 10 meters).

The factual matrix of the present case shows that the Petitioner Wakf Board had undertaken to develop Wakf Properties of the Wakf Estate No. 663 admeasuring 1.05 acres, by constructing a Wakf

Bhawan. It was decided that the construction will be effected in the following manner: -

- a) On the ground floor, a guest house, a guard room and a parking space was to be constructed.
- b) On the first floor, a library and a conference room was to be constructed.
- c) On the second floor and third floor, the office of the Petitioner Wakf Board was to be constructed.

The entire project was undertaken in consonance with Section 32 of the Wakf Act, 1995 and with the due sanction of the Map/Plan by a Government Architect. As envisaged in Section 32, it was resolved that the Petitioner Wakf Board shall continue to manage the property until it is able to recover the legitimate charges incurred in the process of development from the income of the newly constructed building. It was also resolved that the property would be returned to the concerned Wakf Estate after the expenses were recovered. This is evident from the resolution of the Petitioner Wakf Board dated December 27,2018 as well as the Memo No. 260 issued by the Petitioner Wakf Board on January 14,2019.

On March 1, 2021, upon noting the structure being constructed in the close proximity of the Centenary Building of the Hon'ble High Court, the Hon'ble High Court took *suo motu* notice of the matter and formulated the following questions for consideration: -

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- (i) Who is constructing the building, and at whose instance it is being constructed?
- (ii) Whether such person has right and title over the land on which the construction is being made?
- (iii) Whether the Map of the building has been duly approved by the Patna Municipal Corporation and the construction is in accordance with the approved plan?
- (iv) What is the proposed use of the building?

The matter was registered as a Public Interest Litigation and was once again placed before the same Full Bench for consideration. After hearing the parties, the Hon'ble High Court proceeded to order demolition of the entire structure *vide* the Impugned Judgment and Order dated August 3, 2021. At this juncture, it is relevant to mention that all the parties had been directed to file their respective affidavits only in respect of the 4 issues framed by the Hon'ble High Court on March 1, 2021 and all the arguments were also restricted to these issues. However, in the Impugned Judgment dated August 3, 2021, it was noticed that the Hon'ble High Court for the first time observed that the construction was being undertaken by the Petitioner Wakf Board in contravention of Section 32 of the Wakf Act, 1995 despite the fact that this issue was neither framed nor arguments were advanced by the parties in respect thereof. Needless to say, that had the Petitioner been afforded the opportunity, it would

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have produced the resolution dated December 27,2018 as well as the Memo No. 260 dated January 14,2019 which clearly show the compliance of Section 32.

It is submitted that the Impugned Judgment suffers from the following glaring errors and thus warrants interference of this Hon'ble Court under Article 136 of the Constitution of India:-

- a) The Hon'ble High Court erred in proceeding on the basis that the building was being constructed without any valid sanction. It is submitted that as per Bye Law No. 8(1) (A) of the Bihar Building Bye Laws, no separate permission is necessary for the works carried out by the State Government Department/Bihar State Housing Board, if the plans are signed by Government Architect. In the present case the construction plans were approved by the Minority Welfare Department, Government of Bihar and the Map and Plan of construction was approved by the Senior Architect of the Bihar State Building Construction Corporation, which is a Government Company. Therefore, the construction having been carried out by the State Department and the plan having been approved by the Senior Architect of Bihar State Building Construction Corporation, no separate sanction was required from the Patna Municipal Corporation.

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- b) The Hon'ble High Court erred in not appreciating that on the basis of the Plan and Map signed by the Senior Architect of the Bihar State Building Construction Corporation, several buildings have been constructed, without taking any other separate sanctions from the Patna Municipal Corporation. These buildings include, the court campus, the Family Court buildings, the Civil Court buildings, staff residential buildings and several buildings of the Law Department, Government of Bihar. In fact, till date more than 400 constructions including various government buildings have been constructed/renovated in the same manner, i.e. solely on the basis of the Map/Plan signed by the Senior Architect of the Bihar State Building Construction Corporation.
- c) The Hon'ble High Court, erred in holding that the Map/Plan signed by the Senior Architect of the Bihar State Building Construction Corporation was not valid sanction, particularly when all the state authorities, including the Bihar State Building Corporation Limited, Building Construction Department and the Patna Municipal Corporation supported the view that the Senior Architect of the Bihar State Building Construction Corporation was a Government Architect for the purposes of Bye Law No. 8 (1)(A) and that no separate sanction/NoC is required once the Map/Plan is approved by him.

- d) For that the Hon'ble High Court has held that the building was being constructed in contravention of Bye Law No. 21 which prohibits any building exceeding 10 meters height from being constructed within 200 meters radius of the Hon'ble High Court. In this regard it is submitted that the Petitioner Wakf Board as well as all the State Authorities had categorically submitted before the Hon'ble High Court that the building which was still under construction would be brought within the 10 meters height limit in consonance with the Bye Law No. 21.
- e) For that the only deviation from the Bye Laws that was found in respect of the present building was that the building was in excess of 10 meters of height. As mentioned above, the same has been agreed to be brought within the 10 meters limit. It is therefore submitted, that the order of demolition of the entire structure merely due to the fact that the building was in excess of 10 meters limit, is highly disproportionate, especially in view of the fact that in the same area, within a radius of 200 meters, there are several buildings which are in excess of this 10 meters limit prescribed under Bye Law No. 21, these are:-
- (i) Bar Council Bhawan
 - (ii) Bar Association Building
 - (iii) A.G. Office
 - (iv) Lalit Narain Mishra Institution

- (v) Centenary Building of the Patna High Court
 - (vi) Vidyot Bhawan
 - (vii) Niyogan Bhawan
- f) Further the Hon'ble High Court also observed that there could a security threat in view of the building being proposed to be used as a guest house. In this respect, having regard to the security concern highlighted by the Hon'ble High Court, the Petitioner Board as well as the State Authorities had resolved (in the meeting dated April 8,2021 held under the chairmanship of the Chief Secretary of Bihar) to use the building in question only for the purpose of the office of the Petitioner Wakf Board. For that when the Petitioner Wakf Board as well as all the State Authorities had themselves agreed to demolish the offending portion of the building (i.e. to bring the building within the height of 10 meters) and when the security concerns were also addressed, then there was no reason whatsoever to order the demolition of the entire building.
- g) The Hon'ble High Court travelled beyond the scope of the issues framed, particularly when it observed that the construction was being undertaken in contravention of Section 32 of the Wakf Act,1995, despite the fact no issue was framed nor any arguments were advanced in this regard.

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In view of the foregoing, it is submitted that the land in question has been taken over by the Petitioner Wakf Board in accordance with the provisions of the Wakf Act, 1995 for development. The construction was commenced after taking due sanction and the only violation in respect of the height of the building being in excess of 10 meters, has been agreed to be addressed. In such circumstances, no occasion arose to order the demolition of the entire structure, particularly the portion which was within the 10 meters height limit.

Hence, the present Special Leave Petition.

LIST OF DATES

The Wakf Estate No. 663 is that of Hazrat Jaluluddin Shah, popularly known as Hazrat Shah Syed Peer Murad Saint, who died as a martyr and was buried in Qabrستان of village Maholi long back in the 17-18th Century which was belonging to one Mr. Bibi Wazid Nishar alias Abadi Saheb. After the death of Saint- Syed Peer Murad, people from all sections of the Society started paying respect to him at his Dargah on his burial ground. The Adjoining lands came to be used by the local Muslims for the purposes of Mosque, Eidgah, Khanquah, Dargah, Graveyard and for other religious, pious or charitable purposes.

1905-1911

Around the year 1905, under the provisions of the Bihar Tenancy Act, 1885, a cadastral survey was conducted in the State of Bihar and the lands in Village Mohali which were being used as Dargah and other religious purposes were also surveyed. As per the said survey which was completed in the year 1911, the following plots were being used for the purposes of Dargah, Graveyard and for other religious, pious or charitable purposes: -

Sl. No.	Khata No.	Plot No.	Area (Acre)	Nature of Land
1.	156	193	0.07	Kabristan (Dargah/Mazar)
2.	48	194	1.05	Kabristan (Dargah/Mazar)
3.	425	195	0.36	Dargah
4.	424	196	0.28	Dargah
5.	423	197	0.16	Fakriana (rent free grant to Mazar/Waqf)
6.	96	138	0.31 ¼ = 10 Khata	Through Deed of Dedication by (Man) Narain, S/o Choubey on 10.09.1909 to

				Dargah for Neyaz Fateha/Langar for Urs (waqf) to Mujabir, Nabi Baksh Main.
7.	68	142	0.82	Property for Neyaz Neyaz Dargah Samilat Malikan Mosamat Wazirrun Nisha.
8.	119	143	0.38	Property of Mazar Neyaz, Neyaz Dargah, Mosamat Bibi Wazirrun Nisha, Khewat No.-12.

It is relevant to note that the plot in question i.e. Plot No. 194 was shown as Kabristan (Dargah/Mazar).

Since the abovementioned properties were being used for the purposes of Dargah, Mosque, Eidgah, Khanquah, Peer Khana, Graveyard and

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for other religious, pious or charitable purposes, they were-wakf by user as per provision of Section 2(m) of Bihar Wakf Act, 1947.

17.03.1953 On March 17, 1953, on the basis of requisition of Syed Shah Asgar Hussain, Advocate, the properties mentioned in the table above were registered in Register No. 26 as Wakf-fi-Sabilillah in the name Dargah Hazrat Shah Jalal Shaheed near High Court, Patna bearing registration no. 663. The said Wakf Estate is presently being managed by the Managing Committee under control of the Petitioner Wakf Board, Patna under the Wakf Act, 1954 (now under the Wakf Act, 1995).

A true and typed copy of the Register-26 of Wakf Estate No. 663 dated March 17, 1953 is annexed hereto and marked as **Annexure P-1 [Page Nos. 177 to 184]**.

05.05.2000 On March 29, 2000, the Circle Officer, Sadar Patna vide its Memo No. 618 sought details of the Wakf Plots of Wakf Estate No. 663 to be furnished for measurement and determination. On May 5,2000, after the determination, the

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Circle Officer, Sadar Patna sent a letter furnishing details of plots of Wakf Estate No. 663. In this letter the plot of the Wakf Estate No. 663 were described as the lands of Graveyard.

A true copy of the letter dated May 5, 2000 issued by the Circle Officer, Sadar Patna is annexed hereto and marked as **Annexure P-2 [Page No. 185]**.

18.01.2012

In a matter concerning the encroachment of lands of Wakf Estate No. 663, which included the land in question i.e. Plot No. 194, the Hon'ble High Court directed for construction of a boundary wall.

A true copy of the order dated 18.01.2012 passed by the Hon'ble High Court of Judicature at Patna in Miscellaneous Jurisdiction Case No. 4010 of 2011 is annexed hereto and marked as **Annexure P-3 [Page Nos. 186 to 187]**.

1995-2013

Wakf Act, 1995 (as amended in the year 2013) made a provision under Section 32 and Section 51(1A) for the development of Wakf Properties.

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19.01.2018 The Petitioner Wakf Board sent a proposal for construction of Wakf Bhawan to the Bihar State Building Construction Corporation Ltd, Patna.

15.02.2018 The Petitioner Wakf Board held a meeting wherein the Resolution No. 5 was passed whereby a decision was taken to develop Wakf Properties of the Wakf Estate No. 663 (which is the subject matter of the present dispute), by constructing a Wakf Bhawan. It was decided that the construction will be effected in the following manner:-

- a) On the ground floor, a guest house, a guard room and a parking space was to be constructed.
- b) On the first floor, a library and a conference room was to be constructed.
- c) On the second floor and third floor, the office of the Petitioner Wakf Board was to be constructed.

A true and translated copy of the Resolution No.5 dated 15.02.2018 passed in the meeting of the Petitioner Wakf Board is annexed hereto and marked as **Annexure P-4 [Page Nos. 188 to 189]**.

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23.03.2018

As mentioned above the proposal for construction of Wakf Bhawan was sent to Bihar State Building Construction Corporation Ltd. for sanction of plan for construction of Wakf Bhawan on January 19, 2018. On March 23,2018, the Bihar State Building Construction Corporation Ltd., Patna *vide* its letter No. 849 approved the plan and sent it to the Chief Executive Officer of the Petitioner Wakf Board.

A true and translated copy of the Letter No. 849 dated March 23, 2018 (along with the maps) sent by the Bihar State Building Construction Corporation Ltd. to the Petitioner Wakf Board is annexed hereto and marked as **Annexure P-5 [Page Nos. 190 to 199]**.

04.04.2018

The CEO of the Petitioner Wakf Board, sent letter No. 952 to the Special Secretary cum Director, Minority Welfare Department, Government of Bihar enclosing the sanctioned Map of the proposed Wakf Building on Wakf Estate No. 663, Plot No. 194 as sanctioned by the Bihar State Building Construction Corporation Ltd. Patna *vide* letter no. 849 dated March 23, 2018.

- 12.04.2018 The Special Secretary cum Director of Minority Welfare Department sent a letter to the CEO of the Petitioner Wakf Board calling him for a meeting on April 24, 2018 to discuss the sanctioned Map for construction of plan.
- 14.08 2018 The State of Bihar issued a Bihar State Wakf Development Scheme, in terms of which a Wakf Development Fund was constituted for development of Wakf Properties.
- 06.11.2018 The Special Secretary cum director of the minority Welfare Department, Government of Bihar sent the approval of the Map of the proposed building the Petitioner Wakf Board.
- 28.11.2018 The CEO of the Petitioner Wakf Board vide its letter dated requested the following persons for spot verification of the proposed construction of the Wakf Bhawan on November 29, 2018:-
- a) Special Secretary cum Director of Minority Welfare Department, Government of Bihar
 - b) Minority Welfare Officer cum Nodal Officer Patna

c) Deputy General Manager, Bihar State Building Construction Corporation Ltd.

09.12.2018 The CEO of the Petitioner Wakf Board *vide* its letter no. 3579 requested the District Minority Welfare cum Nodal Officer Wakf, Patna to send the Map of proposed building to the Department through District Level Committee.

22.12.2018 The Chief General Manager of Bihar State Building Construction Corporation *vide* its Letter No. 3804 sent administrative sanction for the construction of proposed building of Wakf Bhawan, the cost of which was estimated as Rs. 14 crores, 67 lakhs and 86 thousand.

A true and translated copy of the letter dated December 22, 2018 sent by the Bihar State Building Construction Corporation Ltd. is annexed hereto and marked as **Annexure P-6 [Page Nos. 200 to 201]**.

27.12.2018 The Petitioner Wakf Board held a meeting wherein it was resolved that in view of Section 5.3 of the Bihar State Wakf Development Scheme, the Wakf Board has identified certain properties which had the potential to be

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developed from the Wakf Development Fund. It was further categorically mentioned as follows:-

“After reinstatement of cost of development, the developed property will hand over the related waqf estate. The waqf Board will constitute separate committee for the maintenance and administration of waqf under agenda for development. Under the said scheme the following waqf estate found for development and resolved to overtake. 1. Waqf Estate No-663, High Court Mazar Sharif....”

28.12.2018 The Petitioner Wakf Board wrote to the Special Secretary-cum-Director of the Minority Welfare Department requesting for administrative approval for the scheme of development in relation to *inter alia* Wakf Estate No. 663 to be implemented under the Bihar State Wakf Development Scheme.

14.01.2019 The Petitioner Wakf Board issued an Officer Order being Memo No. 260 regarding acquisition of lands of Plot No. 194 Khata No. 48 Area 1.05 acres. A copy of this memo was marked to the Secretary of the Managing

Committee of Wakf Estate No. 663. In this Memo, it was stated *inter alia* as follows:-

- a) Petitioner Wakf Board can keep the property under its control and management till the cost of expenditure on property, interest, expenditure on maintenance and other charges incurred on property, are not recovered from the income earned from the property.
- b) Petitioner Wakf Board will give the average net annual income's quantity as annual compensation to the Mutawalli of concerned Waqf Estate/Managing Committee's Secretary, during last three years before Board's taking over the property.
- c) As per sub-section 06 of section 32 of the Waqf Act, 1995, after the recovery of all the expenses, calculated under sub-section 05, from the income earned from the developed property, the developed property will be returned to the concerned Mutawalli/Managing Committee's Secretary.

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- d) There will be no binding to register/ transfer the land of Waqf Estate in the name of government for the implementation of scheme.

15.01.2019 The Petitioner Wakf Board informed the Special Secretary cum Director that the property of Wakf Estate No. 663 was taken over in accordance with Section 32 of the Wakf Act,1995.

11.02.2019 The Chief General Manager *vide* his letter no. 625 sent the approved Map of the proposed building to the Petitioner Wakf Board for construction of the proposed building by Bihar State Building Construction Corporation Ltd., Patna.

26.02.2019 Special Secretary cum Director of the Minority Welfare Department *vide* memo no. 124 granted technical sanction to release the fund for construction of the proposed building up to Rs. 500 lakhs.

A true and translated copy of the administrative sanction dated February 26, 2019 granted by the Director of Minority Welfare Department *vide*

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Memo No. 124 is annexed hereto and marked as **Annexure P-7 [Page Nos. 202 to 206]**.

12.07.2019 Again by Memo No. 318 was issued by the Minority Welfare Department to the Accountant General of Bihar for the release of the fund of Rs. 500 lakhs.

31.07.2019 The tender for the construction of the Wakf Bhawan was published in the Hindi Daily "Hindustan" inviting bids by contractors.

A true and translated copy of the tender document inviting bids for construction of the Wakf Bhawan as issued by the Bihar State Building Construction Corporation Limited as published on July 31, 2019 in the Hindi Daily "Hindustan" is annexed hereto and marked as **Annexure P-8 [Page Nos. 207 to 210]**.

13.03.2020 On receipt of the bids and after following of all procedural requirements, a decision was taken in the meeting of Tender Committee of the Bihar State Building Construction Corporation held on March 6, 2020. This decision approving the financial bid offered by the successful bidder "Md. Tariq Anwar, Vill + PO Kanhipur,

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Mokama, Patna” was thereafter communicated *vide* letter no. 681 issued by the Officer of the Chief General Manager, Bihar State Building Construction Corporation on March 13,2020.

A true and translated copy of the Letter No. 681 dated March 13, 2020 issued by the Officer of the Chief General Manager, Bihar State Building Construction is annexed hereto and marked as **Annexure P-9 [Page Nos. 211 to 215]**.

01.03.2021

The Hon’ble High Court was pleased to take judicial notice of the building being constructed in the vicinity of the Hon’ble High Court. The Hon’ble High Court in order to ascertain the legitimacy of the building as well as to alleviate the concerns regarding the security due to the construction of the building, directed that matter to be put up before the Hon’ble Chief Justice of Bihar, to consider *inter alia*, the following aspects:-

- (i) Who is constructing the building, and at whose instance it is being constructed?
- (ii) Whether such person has right and title over the land on which the construction is being made?

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- (iii) Whether the Map of the building has been duly approved by the Patna Municipal Corporation and the construction is in accordance with the approved plan?
- (iv) What is the proposed use of the building?

A true copy of the order dated March 1, 2021 passed by the Hon'ble High Court in Criminal Writ Jurisdiction Case No. 887 of 2013, Criminal Writ Jurisdiction Case No. 899 of 2013 and Criminal Writ Jurisdiction Case No. 278 of 2015 is annexed hereto and marked as **Annexure P-10 [Page Nos. 216 to 220]**.

05.03.2021 The matter regarding the new building being constructed adjacent to the Hon'ble High Court was registered as Civil Writ Jurisdiction Case No. 6751 of 2021.

14.03.2021 The Building Construction Department, filed its counter affidavit stating *inter alia* as follows:-

- a) The building is being contracted through the Bihar State Building Construction Corporation Ltd. in light of the plan accorded by the Minority Welfare

Department, Government of Bihar *vide*
Memo No. 124 dated February 26,2019.

- b) The tender for the building was published in the Hindi Daily – *Hindustan* on July 31, 2019 and on receipt of bids a decision was taken by the Tender Committee of the Bihar State Building Construction Corporation Ltd.
- c) The building is being constructed on Plot No. 194 as per the approved drawings and administrative approval of the Minority Welfare Department, Government of Bihar and the Wakf board claims title over the same.
- d) The Bihar Construction Department is only an executing agency in this process.
- e) The construction has commenced in accordance with the approval of the Map by Government Architect of the Bihar State Building Construction Corporation Ltd, who being a Government Architect is empowered to approve the Map of all Government buildings as per Bye-Law No.

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8 (1)(A) of the Bihar Building Bye Laws, 2014.

A true copy of the Counter Affidavit dated March 14, 2021 (without annexures) filed by the Bihar Building Construction Department in Civil Writ Jurisdiction Case No. 6751 of 2021 before the Hon'ble High Court is annexed hereto and marked as **Annexure P-11 [Page Nos. 221 to 225]**.

08.04.2021

A meeting was held under the chairmanship of the Chief Secretary of Bihar in which it was decided as follows: -

- a) In accordance with the provisions of section 21 of the Bihar Building Bye-laws 2014, height of the building would be maintained at 10 meters and construction made more than this height, shall be demolished.
- b) In view of security, height of the boundary wall of the above-said building be increased towards the Hon'ble High Court building as per requirement and Screening be made with Steel/Alloy sheet.

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- c) The above-said building be not used as Musafirkhana and instead it may be used as an office having sufficient security arrangements. From the security point of view, the use of roof etc. be restricted and installation of CCTV in the building be ensured. Entry to visitors be allowed after verification at main gate and entry be allowed through Entry Pass.

A true and translated copy of the Minutes of Meeting held on April 8, 2021 under the Chairmanship of the Chief Secretary, State of Bihar is annexed hereto and marked as **Annexure P-12 [Page Nos. 226 to 230]**.

09.04.2021

The Petitioner Wakf Board filed its Counter Affidavit stating that the land in question was Wakf Land, registered in Register 26 in the name of Wakf Estate No. 663. It was also mentioned that:-

- a) The original plan was to construct a guest house, guard room and parking space in the ground floor, a library and conference room in the first floor and to use the second and

third floor as the office of the Petitioner Wakf Board.

- b) The construction plan was sanctioned and approved by the Bihar State Building Construction Corporation Ltd. in consonance with the Bye Law No. 21 of the Bihar Building Bye-Laws, 2014 which required the plan to be approved by a Government Architect. Since the said plan was approved by the Government Architect of the Bihar Building Construction Corporation Ltd., Patna who was competent to sanction the said Plan under Bye Laws No. 8(1)(A), there was no breach of the Bihar Building Bye Laws.

A true copy of the Counter Affidavit dated 09.04.2021 (without annexures) filed by the Petitioner Wakf Board in Civil Writ Jurisdiction Case No. 6751 of 2021 before the Hon'ble High Court is annexed hereto and marked as **Annexure P-13 [Page Nos. 231 to 244]**.

On the same date, i.e. on April 9, 2021 itself, the Patna Municipal Corporation also filed its

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Counter Affidavit, stating that the plan was prepared and approved by a Government Architect as per Bye-Law No. 8(1) (A) of the Bihar Building Bye Laws, 2014 and hence no permission from the Patna Municipal Corporation was necessary for carrying out the work. It was therefore submitted that no plans were submitted to the Patna Municipal Corporation at any point of time.

A true copy of the Counter Affidavit dated 09.04.2021 filed by the Patna Municipal Corporation in Civil Writ Jurisdiction Case No. 6751 of 2021 before the Hon'ble High Court is annexed hereto and marked as **Annexure P-14 [Page Nos. 245 to 247]**.

10.04.2021

A supplementary counter affidavit was filed on behalf of Respondent No. 3 (Chief Secretary, Government of Bihar), Respondent No. 5 (The Secretary, Building Construction Department, Government of Bihar), Respondent No. 8 (Municipal Commissioner, Patna Municipal Corporation) and Respondent No. 9 (Bihar State Building Construction Corporation Ltd.), stating that a meeting was held under the Chairmanship

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of the Chief Secretary on April 8,2021 wherein it was resolved that the height of the building shall be brought within 10 meters and that the building shall be used only as office of wakf board so as to alleviate all security concerns.

A true copy of the Supplementary Counter Affidavit dated 10.04.2021 (without annexure) filed by the Respondent No. 3 (Chief Secretary, Government of Bihar), Respondent No.5 (The Secretary, Building Construction Department, Government of Bihar), Respondent No.8 (Municipal Commissioner, Patna Municipal Corporation) and Respondent No.9 (Bihar State Building Construction Corporation Ltd.) in Civil Writ Jurisdiction Case No. 6751 of 2021 before the Hon'ble High Court is annexed hereto and marked as **Annexure P-15 [Page Nos. 248 to 251]**.

16.04.2021

The Hon'ble High Court was pleased to direct the State authorities as well as the Petitioner Wakf Board to submit all the original records relating to the land and construction of the building in question in respective sealed covers

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before the Learned Registrar General, Patna High Court.

A true copy of the order dated April 16, 2021 passed by the Hon'ble High Court in Civil Writ Jurisdiction Case No. 6751 of 2021 is annexed hereto and marked as **Annexure P-16 [Page Nos. 252 to 254]**.

30.04.2021

The Petitioner Wakf Board sent the following documents in a sealed cover to the Learned Registrar General of the Hon'ble High Court:-

- (i) Continuous Khatiyani of Khesra No. 194.
- (ii) Certified copy of relevant extracts of Register 26 (prepared under Section 37 of the Central Wakf Act, 1995).
- (iii) Copy of the Resolution No. 5 of passed in the board meeting held on February 15, 2018.

A true copy of the letter dated April 30, 2021 sent by the Petitioner Wakf Board to the Learned Registrar General of the Hon'ble High Court is annexed hereto and marked as **Annexure P-17 [Page Nos. 255 to 256]**.

17.05.2021

The Petitioner Wakf Board filed Supplementary Counter Affidavit stating *inter alia* as follows:-

- a) Waqf Act, 1995 gives power of management and control of Waqf property to Waqf Board. It empowers the Wakf Board to deal with its property, in any manner as it deems fit subject to limitation contained in the statutes.
- b) Section 51 (1-A) of the Waqf Act, 1995 empowers the Waqf Board to sell, gift, mortgage, exchange or lease the Waqf land.
- c) Section 32 (4) of the Act empowers the Waqf Board to develop shopping center, market, exchange or lease the Waqf land.
- d) Section 32 (2) (e) (iii) of the Act empowers the Waqf Board to alter the uses of the Waqf Property, once the original purpose is incapable of achievement or has come to end.
- e) If Wakf Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing take up the development of such property through such agency and in such

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manner as the Board may determine and move a resolution containing recommendation of development of such Waqf Property which shall be passed by a majority of two thirds of the total membership of Board.

- f) The Wakf Act, 1995 also provides that nothing shall affect any acquisition of Waqf property by the State for a public purpose under the Land Acquisition Act or any other law relating to acquisition of land, if such acquisition is made in consultation with the Board.
- g) Wakf Board is included within the meaning and definition of “State” under Article 12 of the Constitution of India and has the right to acquire movable and immovable property for managing the Waqf affairs including the right to acquire the waqf property with sanction of Board for public purpose.
- h) Waqf Board being a statutory authority and for the valid reason as per scheme and guideline of Bihar Govt. for development and upliftment of Waqf property of Waqf Estate No.663, acquired unused part of Plot

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No.194 for such development after the proposal of managing committee of the Waqf Estate No. 663 received in this regard.

- i) As per Section 56 of the Act, the Wakf property can be leased out for thirty years or beyond thirty years with the consent of State Government. In view of proviso of Rule 3 of the Waqf Properties Lease Rules 2014, Wakf lands situated outside of graveyard can be leased out for construction. Since the constructed area over lands of plot No.194 of Wakf property of Wakf Estate No.663 is situated outside the main premise of a dargah/graveyard, the same could be acquired by the Wakf Board for purposes of construction of office of Bihar State Sunni Waqf Board.
- j) Entire construction has been carried out by the agency of State of Bihar after following due procedure.

A true copy of the Supplementary Counter Affidavit dated 17.05.2021 filed by the Petitioner Wakf Board before the Hon'ble High Court in Civil Writ Jurisdiction Case No. 6751

of 2021 is annexed hereto and marked as **Annexure P-18 [Page Nos. 257 to 262]**.

24.05.2021

The Managing Committee of Wakf Estate No. 663 filed its Counter Affidavit, supporting the stand taken by the Petitioner Wakf Board and also submitting as follows:-

- a) The notice of the matter was taken *suo motu* and the matter was ultimately registered as PIL bearing CWJC No. 6751 of 2021. As per the rules of the Hon'ble High Court, a PIL should first be listed for orders before the appropriate division bench. Thus, the listing of the matter before the Special Bench of 5 Hon'ble Judges was not in consonance with the rules. [Chapter XXIcc Rule 4 of the High Court Rules]
- b) Further, the listing of the matter before the very Special Bench which took *suo motu* action is in principle in contradiction of the legal maxim- *nemo judex in sua causa*.
- c) There are several other buildings in the vicinity, which stand on the same footing as the building in question, in terms of

compliance of Bye Law No. 21, these buildings are:-

- (i) Bar Council Bhawan
- (ii) Bar Association Building
- (iii) A.G. Office
- (iv) Lalit Narain Mishra Institution
- (v) Centenary Building of the Patna High Court.

Thus, action being taken only against the concerned building is discriminatory.

A true copy of the Counter Affidavit dated 24.05.2021 (without annexures) filed by the Managing Committee of Wakf Estate No. 663 before the Hon'ble High Court in Civil Writ Jurisdiction Case No. 6751 of 2021 is annexed hereto and marked as **Annexure P-19 [Page Nos. 263 to 273]**.

15.06.2021

A Supplementary Counter Affidavit was filed by the Respondents No. 9 (The Bihar State Building Construction Corporation Limited) and Respondent No. 10 (The Managing Director, Bihar State Building Construction Corporation Ltd.), stating *inter alia* as follows:-

- a) As per By-Law No. 8(1)(A) of the Bihar Building By-Laws, 2014, a Government Architect has been empowered to approve the Map/Plan of works to be carried out by the State Government.
- b) Bihar State Building Construction Corporation is a Government Company registered under the Companies Act, 1956. As per Clause 3 of the Articles of Association, the Bihar State Building Construction Corporation Limited is a government company within the meaning of Section 617 of the Companies Act.
- c) A senior architect of the Bihar State Building Construction Corporation is an employee of the government company and is therefore a Government Architect within the meaning of By-Law (8)(1)(A).
- d) Several Government buildings including the court campus, have been constructed on the basis of the Plan and Map which were signed by the Senior Architect of the Bihar State Building Construction Corporation.
- e) On April 8,2021, a decision has been taken in the meeting under the Chairmanship of

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the Chief Secretary of Bihar to limit the height of the building in question within 10 meters so that the legal requirement as per By-Law 21 of the Bihar Building By-Laws, 2014 is fulfilled.

A true copy of the Supplementary Counter Affidavit (along with its annexure) dated 15.06.2021 filed by the Respondent Nos. 9-10 before the Hon'ble High Court in Civil Writ Jurisdiction Case No. 6751 of 2021 is annexed hereto and marked as **Annexure P-20 [Page Nos. 274 to 284]**.

23.06.2021

The Petitioner Wakf Board filed its Written Arguments.

A true copy of the Written Arguments dated 23.06.2021 filed by the Petitioner Wakf Board before the Hon'ble High Court in Civil Writ Jurisdiction Case No. 6751 of 2021 is annexed hereto and marked as **Annexure P-21 [Page Nos. 285 to 293]**.

03.08.2021

The Hon'ble High Court was pleased to pass the Impugned Judgment and Final Order in Civil Writ Jurisdiction Case No. 6751 of 2021 directing the demolition of the entire building.

18.08.2021

Hence, this Special Leave Petition.

IN THE SUPREME COURT OF INDIA

[S.C.R. ORDER XXI RULE 3 (1) (a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2021

WITH

PRAYERS FOR INTERIM RELIEFS

POSITION OF PARTIESIN THE HIGH
COURTIN THIS
COURTBETWEEN

THE BIHAR STATE SUNNI WAQF BOARD, through its Chief Executive Officer, Mr. Khursheed Anwar Siddiqui, Office at: 2 nd Floor, Haj Bhawan, 34, Ali Imam Path, Harding Road, Patna - 800001.	Respondent No.13	Petitioner
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-VERSUS-

1. THE STATE OF BIHAR, through the Chief Secretary, Government of Bihar, Main Secretariat, Patna - 800015.	Respondent No.1	Contesting Respondent No.1
2. THE HIGH COURT OF JUDICATURE AT PATNA, through its Registrar General, Patna - 800028, Bihar.	Respondent No.2	Contesting Respondent No.2
3. THE CHIEF SECRETARY, Government of Bihar, Main Secretariat, Patna - 800015.	Respondent No.3	Contesting Respondent No.3

4. THE SECRETARY, Minority Welfare Department, Government of Bihar, Patna - 800015, Bihar.	Respondent No.4	Contesting Respondent No.4
5. THE SECRETARY, Building Construction Department, Government of Bihar, Visheshwariya Bhawan, Bailey Road, Patna - 800015, Bihar.	Respondent No.5	Contesting Respondent No.5
6. THE DIRECTOR GENERAL OF POLICE, Government of Bihar, Patna - 800014, Bihar.	Respondent No.6	Contesting Respondent No.6
7. THE PATNA MUNICIPAL CORPORATION, through its Municipal Commissioner, Second Floor, Block-C, Maurya Lok Complex, Budhha Marg, Patna - 800001, Bihar.	Respondent No.7	Contesting Respondent No.7
8. MUNICIPAL COMMISSIONER, Patna Municipal Corporation, Second Floor, Block-C, Maurya Lok Complex, Budhha Marg, Patna - 800001, Bihar.	Respondent No.8	Contesting Respondent No.8
9. THE BIHAR STATE BUILDING CONSTRUCTION CORPORATION LTD., through its Managing Director, Hospital Road, Shastri Nagar, Patna - 800023, Bihar.	Respondent No.9	Contesting Respondent No.9
10. THE MANAGING DIRECTOR, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastri Nagar, Patna - 800023, Bihar.	Respondent No.10	Contesting Respondent No.10

11. THE DISTRICT MAGISTRATE, Gandhi Maidan, Collectorate, Patna - 800001, Bihar.	Respondent No.11	Contesting Respondent No.11
12. THE SENIOR SUPERINTENDENT OF POLICE, National Informatics Centre (NIC), Collectorate Campus, Patna - 800001, Bihar.	Respondent No.12	Contesting Respondent No.12
13. THE MANAGING COMMITTEE OF WAQF ESTATE No. 663 Hazrat Syed Shaheed Peer Muradshah Mazar, Near High Court, Patna, through its President, Sri Khursheed Alam, AAG, High Court, Patna, resident of T2, Surya Triveni Apartment No.3H, New Patliputra Colony, Patna.	Respondent No.14	Contesting Respondent No.13

**PETITION UNDER ARTICLE 136 OF THE
CONSTITUTION OF INDIA**

To

The Hon'ble the Chief Justice of India and
His Hon'ble Companion Justices of the
Hon'ble Supreme Court of India.

This humble Petition of the
above-named Petitioner

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner above named is filing the present Special Leave Petition in this Hon'ble Court under Article 136 of the Constitution of India against the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High Court of Judicature at Patna rendered in Civil Writ Jurisdiction Case No. 6751 of 2021. By virtue of the Impugned Judgment, the Hon'ble High Court, in *suo motu*

proceedings directed the demolition of the entire structure of the proposed Wakf Bhawan building, which was being constructed in the vicinity of the Hon'ble High Court.

1A. It is submitted that no Letters Patent Appeal would lie against the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High Court of Judicature at Patna rendered in Civil Writ Jurisdiction Case No. 6751 of 2021.

2. **QUESTIONS OF LAW**

The following questions of law of general public importance arise for consideration by this Hon'ble Court: -

- (i) Whether the Hon'ble High Court erred in holding that the proposed Wakf Bhawan was being constructed without a valid sanction?
- (ii) Whether the Senior Architect of the Bihar State Building Construction Corporation is a Government Architect for the purposes of Bye Law No. 8(A) of the Bihar Building Bye-Laws, 2014?
- (iii) Whether the Hon'ble High Court erred in ordering demolition of the entire structure, even when the offending portion of the said building (i.e. the portion in excess of 10 meters of the height) was agreed to be removed by the Petitioner Wakf Board as well as by the State Authorities?

- (iv) Whether the Hon'ble High Court erred in directing the demolition of the entire structure on the ground of safety, when the Petitioner Wakf Board and the State Authorities had already agreed to use the proposed building only for the purposes of the office of the Petitioner Wakf Board?
- (v) Whether the Petitioner Wakf Board had followed the procedure under the Wakf Act,1995 for the development of Wakf Estate No. 663?
- (vi) Whether the minority view taken by the Hon'ble High Court is the correct view as the building in question can be regularized and complete demolition is not necessary?
- (vii) Whether the development of the property was in contravention of Section 32 of the Wakf Act,1995?
- (viii) Whether the Hon'ble High Court erred in holding that the development was being undertaken in contravention of Section 32 of the Wakf Act, 1995 without framing any issue in this regard and without the parties advancing any arguments in that regard?

3. DECLARATION IN TERMS OF RULE 3 (2):

The Petitioner states that it has not filed any other petition seeking Leave to Appeal in this Hon'ble Court against the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High

Court of Judicature at Patna rendered in Civil Writ Jurisdiction Case No. 6751 of 2021.

4. **DECLARATION IN TERMS OF RULE 5:**

That Annexures P-1 to P-21 produced along with the Special Leave Petition are true and correct copies of the pleadings/documents which form part of the record of the case in the Court/Tribunal below against whose order, leave to appeal is sought for in this petition.

5. **GROUND:**

That being aggrieved by the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High Court of Judicature at Patna rendered in Civil Writ Jurisdiction Case No. 6751 of 2021, the Petitioner herein is filing the present Special Leave Petition on the following, amongst other grounds which are being raised in the alternative and are without prejudice to one another:-

A. For that Hon'ble High Court erred in proceeding on the basis that the building was being constructed without any valid sanction. It is submitted that as per Bye Law No. 8(A) of the Bihar Building Bye Laws, 2014, no separate permission is necessary for the works carried out by the State Government Department/Bihar State Housing Board, if the plans are signed by Government Architect. In the present case the construction plans were approved by the Minority Welfare Department, Government of Bihar and the Map and Plan of construction was

approved by the Senior Architect of the Bihar State Building Construction Corporation, which is a Government Company. Therefore, the construction having been carried out by the State Department and the plan having been approved by the Senior Architect of Bihar State Building Construction Corporation, no separate sanction was required.

- B. For that the Hon'ble High Court erred in not appreciating that the Senior Architect of Bihar State Building Construction Corporation Limited is a Government Architect as the Building Corporation is a Government Company. In fact, all parties including the Petitioner Wakf Board as well as the Patna Municipal Corporation have stated that the sanction taken by the Senior Architect of the Bihar Building Corporation was a valid sanction as such an architect is a Government Architect and no separate sanction of the Patna Municipal Corporation is required in view of Bye Law No.8(1)(A).
- C. For that the Hon'ble High Court erred in not appreciating that on the basis of the Plan and Map signed by the Senior Architect of the Bihar State Building Construction Corporation, several buildings have been constructed, without taking any other separate sanctions. These buildings include, the court campus, the Family Court Buildings, the Civil Court Buildings, Staff Residential Buildings and several buildings of the Law Department, Government of Bihar. In fact, till date more than

400 constructions including various government buildings have been constructed/renovated in the same manner, i.e. solely on the basis of the Map/Plan signed by the Senior Architect of the Bihar State Building Construction Corporation.

- D. For that the Hon'ble High Court, erred in holding that the Map/Plan signed by the Senior Architect of the Bihar State Building Construction Corporation was not valid sanction, particularly when all the state authorities, including the Bihar State Building Corporation Limited, Building Construction Department and the Patna Municipal Corporation supported the view that the Senior Architect of the Bihar State Building Construction Corporation was a Government Architect for the purposes of Bye Law No. 8 (A) and that no separate sanction/NoC is required once the Map/Plan is approved by him.
- E. For that the Hon'ble High Court erred in holding that the Bye-Law No. 8(1) was only for the purpose of "works related to alteration" of the nature enumerated in clauses (i) to (xi) thereof. It is submitted that Bye-law no. 8(1) starts with words '*No permission or notice shall be required*' and Bye-law no. 8(A) also starts with the words '*No permission shall be necessary*'. Thus, on a harmonious reading of the two provisions, it is clear that Bye-law No. 8 (1) and Bye-law No. 8(A) are separate and distinct and that Bye-law no. 8(A) is not a sub-clause of Bye-law no. 8 (1). This is further substantiated by the fact that in Bye-law

No. 8(1), the phrase is '*No permission or notice shall be required for the work related to the following alterations and the like...*' whereas the language of Bye-law No. 8(A) reads '*No permission shall be necessary for works carried out by...*'. This shows that the scope of Bye-law no. 8(A) is wider and more general in nature and would cover all scenarios, including, but not limited to, fresh construction/erection as also alteration, repairs etc. Furthermore, Bye-law no. 8(A) also stipulates that a Government Architect shall ensure that the plan is prepared as per the provisions of the Bye-laws and the Master Plan and the Development Plan, wherever applicable.

- F. For that, without prejudice to the foregoing, assuming but not admitting that a valid sanction was not obtained and the same needs to be obtained from the Patna Municipal Corporation, it is submitted that the said sanction can be obtained *post facto* in view of Bye Law No. 17(1) read with Bye Law No. 76-77 of the Bihar Building Bye-Laws, 2014.
- G. For that the Hon'ble High Court has held that the building was being constructed in contravention of Bye Law No. 21 which prohibits any building exceeding 10 meters height from being constructed within 200 meters radius of the Hon'ble High Court. In this regard it is submitted that the Petitioner Wakf Board as well as all the State Authorities had categorically submitted before the Hon'ble High Court that the building which was still

under construction would be brought within the 10 meters height limit in consonance with the Bye Law No. 21.

H. For that the only deviation from the Bye Laws that was found in respect of the present building was that the building was in excess of 10 meters of height. As mentioned above, the same has been agreed to be brought within the 10 meters limit. It is therefore submitted, that the order of demolition of the entire structure merely due to the fact that the building was in excess of 10 meters limit, is highly disproportionate, especially in view of the fact that in the same area, there are several buildings which are in excess of this 10 meters limit prescribed under Bye Law No. 21, these are:-

- (i) Bar Council Bhawan
- (ii) Bar Association Building
- (iii) A.G. Office
- (iv) Lalit Narain Mishra Institution
- (v) Centenary Building of the Patna High Court

I. For that the Hon'ble High Court also observed that there could a security threat in view of the building being proposed to be used as a guest house. In this respect, having regard to the security concern highlighted by the Hon'ble High Court, the Petitioner Board as well as the State Authorities had resolved (in the meeting dated April 8,2021 held under the chairmanship of the

Chief Secretary of Bihar) to use the building in question only for the purpose of the office of the Petitioner Wakf Board.

- J. For that when the Petitioner Wakf Board as well as all the State Authorities had themselves agreed to demolish the offending portion of the building (i.e. to bring the building within the height of 10 meters) and when the security concerns were also addressed, then there was no reason whatsoever to order the demolition of the entire building.
- K. For that the Hon'ble High Court erred in not appreciating that the right of the Hon'ble Wakf Board cannot be curtailed for construction of the building as long as there is no violation of any legal provision. It is reiterated that the Petitioner Wakf Board has already agreed to demolish the offending portion of the building (i.e. to bring the building within the height of 10 meters). Further, the Map/Plan of construction has been duly signed by the Senior Architect of the Bihar State Building Construction Corporation, who is a Government Architect in terms of Bye Law No. 8(A). Alternatively, in case this Hon'ble Court is of the view that the building plan needs to be reappraised by Patna Municipal Corporation, then the same can be approved *post facto*. It is therefore submitted that no occasion for demolition of the structure arises.
- L. For that all the parties had been directed to file their respective affidavits only in respect of the 4 issues framed by the Hon'ble

High Court on March 1,2021 and all the arguments were also restricted to these issues. However, in the Impugned Judgment dated August 3, 2021, it was noticed that the Hon'ble High Court for the first time observed that the construction was being undertaken by the Petitioner Wakf Board in contravention of Section 32 of the Wakf Act, 1995 despite the fact that this issue was neither framed nor arguments were advanced by the parties in respect thereof. It is therefore submitted that the Hon'ble High Court travelled beyond the scope of the issues framed, particularly when it observed that the construction was being undertaken in contravention of Section 32 of the Wakf Act,1995, despite the fact that no issue was framed nor any arguments were advanced in this regard.

- M. For that the Hon'ble High Court erred in not appreciating the entire project was undertaken in consonance with Section 32 read with Section 51 (1A) of the Wakf Act, 1995 as is evident from the Petitioner Wakf Board's resolution dated December 27, 2018 wherein it was resolved that in view of Section 5.3 of the Bihar State Wakf Development Scheme, the Wakf Board had identified certain properties which had the potential to be developed from the Wakf Development Fund. It was further categorically mentioned as follows:-

“After reinstatement of cost of development, the developed property will hand over the related waqf estate. The waqf Board will constitute separate committee for the

maintenance and administration of waqf under agenda for development. Under the said scheme the following waqf estate found for development and resolved to overtake. 1. Waqf Estate No-663, High Court Mazar Sharif....”

N. For that the Hon’ble High Court erred in not appreciating the entire project was undertaken in consonance with Section 32 read with Section 51 (1A) of the Wakf Act, 1995 as is evident from the Petitioner Wakf Board’s Officer Order dated January 14,2019 being Memo No. 260 regarding acquisition of lands of Plot No. 194 Khata No. 48 Area 1.05 acres. A copy of this memo was marked to the Secretary of the Managing Committee of Wakf Estate No. 663. In this Memo, it was stated inter alia as follows:-

- a. Petitioner Wakf Board can keep the property under its control and management till the cost of expenditure on property, interest, expenditure on maintenance and other charges incurred on property, are not recovered from the income earned from the property.
- b. Petitioner Wakf Board will give the average net annual income’s quantity as annual compensation to the Mutawalli of concerned Waqf Estate/Managing Committee’s Secretary, during last three years before Board’s taking over the property.

- c. As per sub-section 06 of Section 32 of the Waqf Act, 1995, after the recovery of all the expenses, calculated under sub-section 05, from the income earned from the developed property, the developed property will be returned to the concerned Mutawalli/Managing Committee's Secretary.
- d. There will be no binding to register/ transfer the land of Waqf Estate in the name of government for the implementation of scheme.

In view of the foregoing it is clear that the development was being undertaken in terms of Section 32 of the Wakf Act, 1995.

- O. For that the Hon'ble High Court erred in observing that the proposed building was not an income generating building. It is submitted that it was agreed that the Petitioner Wakf Board shall continue to manage the property until it is able to recover the legitimate charges incurred in the process of development. The income earned, from the running of the guest house, library, conference room and rent to be paid by the Petitioner Wakf Board for running an office on the second and third floor, was to be utilized for recovering of development expenses and the property was to be returned to the concerned Wakf after the expenses were recovered from the said income.
- P. For that the Hon'ble High Court erred in not appreciating that there is no consequence of non-compliance of Section 32 in the

Wakf Act, 1995 and therefore the same is directory and not mandatory. [Please see *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti* (2018) 9 SCC 472]

- Q. For that the notice of the matter was taken *suo motu* and the matter was ultimately registered as PIL bearing CWJC No. 6751 of 2021. As per the rules of the Hon'ble High Court, a PIL should first be listed for orders before the appropriate division bench. Thus, the listing of the matter before the Special Bench of 5 Hon'ble Judges was not in consonance with the rules. [Please see Chapter XXIcc Rule 4 of the High Court Rules]
- R. For that the listing of the matter before the very Special Bench which took *suo motu* action is in principle in contradiction of the legal maxim- *nemo judex in sua causa*.
- S. For that are several other buildings in the vicinity, which stand on the same footing as the building in question, in terms of compliance of Bye Law No. 21, these buildings are:-
- (i) Bar Council Bhawan
 - (ii) Bar Association Building
 - (iii) A.G. Office
 - (iv) Lalit Narain Mishra Institution
 - (v) Centenary Building of the Patna High Court
 - (vi) Vidyot Bhawan
 - (vii) Niyogan Bhawan

Thus, action being taken only against the concerned building is discriminatory.

- T. For that as mentioned above till date more than 400 constructions including the Court complex and various government buildings have been constructed/renovated solely on the basis of the Map/Plan signed by the Senior Architect of the Bihar State Building Construction Corporation. Further, it is reiterated that several buildings in the vicinity are not in conformity of Bye Law No. 21, having height in excess of 10 meters. In such circumstances, the order of demolition of the building in question will give rise to a domino effect, which would result in demolitions of multiple government buildings. This would not only burden the State exchequer but would deal a serious blow to such institutions which clearly would go against the public interest.
- U. For that the Hon'ble High Court erred in not appreciating that the construction in question can at best be termed irregular, which can be regularized by demolishing only the offending portion of the building and not the entire structure.
- V. For that the Hon'ble High Court erred in observing that the 'use' of the land in question, which is being used as a Dargah and Qabristan since times immemorial cannot be modified by constructing Wakf Bhawan. It is submitted that the land in

question was not forming part of the main premises of Dargah and Qabristan, but was the appurtenant land thereof. Therefore, by operation of Rule 3 of the Waqf Properties Lease Rules, 2014, there is no restriction for leasing of waqf land which is situated outside the main premises of the Dargah and Qabristan.

- W. For that the Hon'ble High Court erred in observing that the building was not being constructed out of the funds of the Petitioner Wakf Board. It is submitted that the building was being constructed out of the Wakf Development Fund in terms of the Bihar State Wakf Development Scheme.
- X. For that the Hon'ble High Court erred in observing that the building in question was constructed surreptitiously, when the same was constructed after taking all sanctions and the tender for the construction was published in the newspaper. Further, the construction was undertaken as per the relevant guidelines prevailing in the State of Bihar, due to the ongoing pandemic and there was no violation of the lockdown guidelines as issued from time to time.
- Y. For that the Hon'ble High Court erred in not appreciating that the construction was not undertaken surreptitiously. It is submitted that the complete stoppage of the construction work was only for the initial months from the end of March, 2020. Thereafter the Corporation has been continuing with the work

efficiently and in any event, such efficiency in the construction speed cannot be a ground for drawing an adverse inference.

- Z. For that the Hon'ble High Court erred in not appreciating that the Septic Tank proposed to be built was an underground septic tank which would not in any manner undermine the grandeur of the Hon'ble High Court.
- AA. For that the Hon'ble High Court erred in not appreciating that that the lands in question were recorded as "Shamilat", which itself confirms the Wakf status of the lands in terms of Section 3(r)(ii) of the Wakf Act, which categorically mentions that Wakf includes a Shamlat.
- BB. For that the Hon'ble High Court erred in observing that the building in question was being constructed in violation of the prevailing laws.
- CC. For that the Impugned Judgment suffers from glaring errors and illegalities and thus warrants interference of this Hon'ble Court under Article 136 of the Constitution of India

6. **GROUND FOR INTERIM RELIEF**

That the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High Court of Judicature at Patna rendered in Civil Writ Jurisdiction Case No. 6751 of 2021, proceeds to order the demolition of the entire building, when the only irregularity in the

structure is in relation to the height of the building which is in excess of 10 meters. Further, the Petitioner Wakf Board as well as the State Authorities have already agreed to reduce the height of the building to bring it within 10 meters. Moreover, the security concerns of the Hon'ble High Court have also been addressed by limiting the use of the proposed building only as the office of the Petitioner Wakf Board. In such circumstances, ordering the demolition of the entire structure will cause grave prejudice and irreparable damage to the Petitioner Wakf Board, in addition to the huge loss of public funds which have already been spent on construction. It is therefore necessary that the Impugned Judgment be stayed.

7. MAIN PRAYER

It is respectfully prayed that this Hon'ble Court may be pleased to:

- a) grant Special Leave to appeal against the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High Court of Judicature at Patna rendered in Civil Writ Jurisdiction Case No. 6751 of 2021; and/or;
- b) pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

8. PRAYER FOR INTERIM RELIEF

- a) grant *ex-parte ad-interim* stay of the Impugned Judgment and Final Order dated August 3, 2021 passed by the Hon'ble High

Court of Judicature at Patna rendered in Civil Writ Jurisdiction

Case No. 6751 of 2021; and/or

- b) grant *ex-parte ad-interim* stay of the demolition of the Wakf Bhawan building; and/or
- c) pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:-

EJAZ MAQBOOL
Advocate for the Petitioner

DRAWN BY: -

Mr. Ejaz Maqbool, Advocate
Mr. Md. Helal Ahmad, Advocate

Drafted on: 16.08.2021

New Delhi

Filed on: 18.08.2021