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IN THE HIGH COURT OF JUDICATURE AT PATNA

[CIVIL WRIT JURISDICTION]

C.W.J.C. NO. OF 2014

Motiur Rehman

...Petitioner

Versus

The State of Bihar and Ors.

...Respondents

Sub: Waqf Board Matter

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IN THE HIGH COURT OF JUDICATURE AT PATNA
(Civil Writ Jurisdiction)

C.W.J.C.No..... of 2014

Motiur Rahman**PETITIONER.**

Versus

The State of Bihar & Ors.**RESPONDENTS.**

S y n o p s i s of the case.

Datewise events.

- 15.9.1964 A waqf deed was executed and registered on 13.9.1964 by one Maulvi Mohammad Ali resident of village- Pachahi P.s. Madhepur District- Madhubani. By waqfnama 21 bigha 19 kathas 11 dhur agricultural lands were dedicated for maintenance and other religious purposes for 3 masjids and one Madarsa Mutwallis did not acted upon in the light of directions of waqfnama and they bungled out nearly one crore rupees of waqf property.
- 22.11.1995 The waqf Act 1995 came into existence on 22.11.1995 for better administration of

waqf properties by the central government.

In the state there is provisions of waqf Board for superintendence ^{and} ~~of~~ control of waqf properties According to provisions of above Act , waqf properties and management of waqf properties are in the hands of Collector of the District and Executive Officer of waqf Board.

This application is for direction for making enquiry of bungling of one crore rupees of waqf property ^{and} for removal of Mutwalli of the said waqf property.

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REGISTRATION & STAMP DEPARTMENT

REGISTRATION & STAMP DEPARTMENT

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No..... of 2014

In the matter of an application Under Article 226 of the Constitution of India.

And

In the matter of :-

Motiur Rahman Son of Late Md. Idris, resident of village- Pachahi, P.O. Pachahi, P.S. Madhepur, District- Madhubani at present Secretary Managing Committee Madarsa Islamia Nooria Pachahi, village- Pachahi, P.S. Madhpur, District- Madhubani.

.....**PETITIONER.**

Versus

1. The State of Bihar through, Principal Secretary, Minority Welfare Department, Old Secretariat, Patna.
2. Chairman, Sunni Waqf Board Bihar Haj Bhawan Building Harding Road, Patna.
3. Chief Executive Officer, Waqf Board Bihar, Patna Haj Bhawan Harding Road, Patna.
4. District Collector, Madhubani.
5. Anchal Adhikari, Madhepur District Madhubani.
6. Dr. Anjum Hashwi, son of Dr. Latifur Rahman, residednt of village- Pachahi, P.S. Madhepur, District- Madhubani.

.....Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice of the High Court of Judicature at Patna and her Companion Justices of the said Hon'ble Court.

The humble petition on behalf of
the petitioner above named .

MOST RESPECTFULLY SHEWETH :-

1. That this writ is for issuance of appropriate writ/direction/ order for following reliefs :-

(i) For directing the Collector Madhubani and Anchal Adhikari Madhepur to make enquiry against Dr. Anjum Hasmi and take suitable action against him who has ^{bungled} ~~belonged~~ out about one crore rupees as Mutwalli of Waqf property of 21 bigha 19 kathas and 11 dhur executed and registered on 15.9.1964 dedicated by his fore.father Maulvi Md. Ali.

(ii) For directing the Chief Executive Officer Waqf Board Bihar Patna to take suitable steps as prescribed in law and in Waqf ~~Act~~ ^{Act} to remove Dr. Anjum Hashan from Mutwalli ship of above waqf property.

2. That this writ is maintainable on the following grounds :-

(i) The administrative and statutory control of waqf property ~~are~~ ^{are} on the state and the waqf Board constituted under the provision of waqf Act. 1995.

(ii) Dr. Hasmi failed to Performa the religious services directed in the waqf ~~nama~~ -

(iii) Dr. Hashmi misdealt with the waqf property (Bibi Sadiq Fatima Vs. Mahmood Hashim AIR 1978 SC 1362.

3. That petitioner is Citizen of India and is residing within the territorial jurisdiction of this court.

4. That petitioner is resident of village Pachahi and duly appointed secretary of Madarsa Nooria Pachahi P.S. Madhepur District Madhubani. It is settled law that each ^{beneficiary} ~~beneficiary~~ of waqf property has right to claim account from the mutwalli at anytime. In this view of the matter petitioner has come before this court for sake of justice.

5. That one waqfnama was created by Haji Maulvi Mohammad Ali son of late Karamat Ali resident of village- Pachahi P.s. Madhepur District Darbhanga (Now Madhubani) by registered deed dated 15.9.1964 dedicating total 21 bighas 19 kathas 11 dhur lands in different mauzas. Above property was dedicated for the purpose of supporting the three masgids and one Madarsa located in different Mauja of Madhepur Block.

True photo copy of waqf deed dated 15.9.1964 along with its typed copy is annexed herewith and marked as Annexure- 1 to this writ petition.

6. That description of waqf property is in paragraph 5 of waqfnama (waqf deed dated 15.9.1964) Dedicated lands are agricultural lands located indifferent mauza in Madhepur Anchal of Madhubani District Details of lands Mauza wise are /given as below :-

- (i) Mauza Gargaun Pargana khand Jham Madhepur Sub-registry Jhanjharpur 20 bighas 12½ kathas Darbhanga (Now Madhubani)
- (ii) Mauza Gaibi Jan Seva Pargana Pachahi Thana Madhepur Sub registgry Jhanjharpur16 kathas Darbhanga (Now Madhubani)
- (iii) Mauza Madhepur Pipra ... 14 katha 18 dhur 13 kanma

Total 21 Bigha 19 kahta 11 dhur

Total dedicated lands is 21 bighas 19 kathas 11 dhurs and whole lands are under the terririal control and management रज Anchal Adhikari Madhepur District Madhubani.

7. That terms and conditions for management of above waqf property are laid down by the dedicator in 8 clauses of the waqfnama. In clause 1, waqf (dedicator) has reserved right of management of waqf property for himself till life, In clause 2 of waqfnama it has been laid down that after the death of waqf his good and honest ^{heir} ~~their~~ shall be Muntzimkar of said waqf property. There should be Board of ~~five~~ ^{honest} ~~handed~~ persons of the village constituted by the villagers for looking after the management of above waqf property. It is also written in this clause that every action shall be done openly in the public . It is also written that each masjid should be repaired once in a year. There should be management of burning of lamps in each masjid. There should be management for payment salary to teachers ^{of} the Madarsa etc.

9. That in clause 3 of waqfnama it is laid down that there should be register of income and expenditure of waqf property. After expending income from waqf property for three masjid and one Madarsa rest amount should be utilized for the development of the waqf property. In clause 4 it is laid down that lands rents of 21 bighas 19 kathas 11

dhur should be paid to the government positively so that lands be remain clear from any dues.

10. That in clause 7 a very important condition has been laid down. It is stated in this clause that if it is found, no family member of the waqf is able to manager the affairs of waqf property he should be removed by the committee of ¹⁵ persons ~~of~~ the village. It shold ^{be} done by making public opinion for ^{protection} ~~profession~~ of waqf property.

11. That in terms of waqf dedicator Maulvi Mohammad Ali remained Mutwalli of the waqf property himself. After death of Md. Ali, his son Md. Shaukat Ali became mutwalli of waqf property. After his resignation his brother Md. Alamgir son of Md. Ali became Mutwalli. After his removal another one Md. Mumtaz Ali was made Mutwalli. After that Dr. Anjum Hashmi grand son of Md. Ali dedicator has become Mutwalli of the waqf property and he is continuing waqfnama has laid down terms of ^{Tauhiat} ~~Faulukat~~ has been acted upon from 1964 till date and others terms laid down in different clauses were not acted upon and followed by the successive Mutwalli of the ~~man~~ waqf property. There is clear breach of directions/ commands of

waqf nama and Mutwallis ^{and} ~~one~~ accountable of breach in view of law laid down by supreme court in Garibdas versus M.A. Hamid (AIR 1970 SC 1035)/

12. That 21 bighas 19 kathas 11 dhur lands under waqf property are most fertile lands in Madhepur Block lands produce two seasons crops. Income from ~~the~~ lands from 1964 to 2014 approximately comes ^{to} ~~in~~ the tune of ^{75 Lakhs,} ~~from~~ ^{No income from} lands was used in the maintenances of Masijids and one Madarsa. Successive Mutwalli did not perform the religious services as directed in waqf deed. Present Mutwalli Dr. Anjum Hashmi is misdealing with the waqf property and is liable to be removed from Intezamkur (Mutwalliship) of the waqf property .

13. That Mutwalli of waqf property did not pay same of lands in the office of Circle officer (Anchal Adhikari) Madhepur District Madhubani. Nearly 25 lakh rupees of land rent of government has not be paid to Halka Karamchari and no receipts were obtained from there. This ^{is} matter of enquiry and for taking suitable ^{action} against Dr. Anjum Hashmi who is presently Mutwalli of the waqf property.

14. That waqf property is public property and on waqf property there is administrative and statutory control of state government for protection of public ~~endowment~~ ^{endowment} ~~waqf~~ ^{waqf} Act 1995 is in force. Under section 32 of waqf Act 1995, ~~several~~ ^{General} ~~superintendents~~ ^{of} all ~~waqfs~~ ^{waqf} ~~in~~ ^{State} ~~as~~ ^{is} ~~rate~~ ^{rate} is vested in the Sunni waqf Board, Established by the state government. It is waqf Board ~~in~~ ^{to} ensure that ~~waqfs~~ ^{waqfs} ~~are~~ ^{are} the State ~~one~~ ^{are} property maintained, controlled and administered and the income thereof is duly applied to the object, and for the purpose for such ~~waqfs~~ ^{waqfs} were created. It is in this view of the matter Collector Madhubani and Chief Executive Officer waqf Board Bihar Patna are bound by law to ~~both~~ ^{look} after the matter and do the needful.

15. That it is relevant to mention that under Muslim system, in case of a waqf all rights of ownership to the property vest in ~~God~~ ^{God}. Profits and incomes ~~are~~ ^{are} to be used for the purpose for which such waqf has been created. The mutwalli has no right in the property. He is merely a manager of the property. He has no beneficial interest in the income of the waqf Mutwalli is to act according to direction ~~express or~~ ^{express or} ~~implied~~ ^{implied} in the waqf deed.

16. That there ^{are} ~~one~~ clauses in this waqf deed which fix accountability of Mutwalli. It is to be respected. Such ~~beneficiary~~ ^{beneficiary} has a right no claim account from ^{Mutwalli}..... at any time. If he wants ~~his share~~ ^{his share} of income he can ~~give~~ ^{give} for a specified amount. If it appears to competent court of law that accounting is necessary. It is upon to the court to order accounting.

17. That there is no immediate and efficacious alternative remedy for the petitioner ^{to} redresal of grievances save and except to move this court by way of this writ petition.

18. That petitioner has not moved earlier for the relief as prayed in paragraph no.1 of this writ petition.

It is, therefore, prayed that your Lordships may graciously be pleased to issue Rule NISI calling upon the respondent to show cause as to why not writ be issued to give the petitioner the relief as prayed in paragraph no.1 of this writ petition and upon return of the Rule and after

hearing the parties and perusing the records of the case, make the same absolute.

And/or

Pass such order/orders as may deem fit and proper in the facts and circumstances of the case.

And for this the petitioner shall ever pray.

AFFIDAVIT

I, Motiur Rahman, aged about 52 years, Son of Late Md. Idris, resident of village- Pachahi, P.O. Pachahi, P.S. Madhepur, District- Madhubani at present Secretary Managing Committee Madarsa Islamia Nooria Pachahi, village- Pachahi, P.S. Madhpur, District- Madhubani. do hereby solemnly affirm and state as follows :-

1. That I am petitioner of this case and as such I am well acquainted with the facts and circumstances of this case.

2. That the contents of this affidavit and the accompanied petition have been read over and explained to me in Hindi which have been fully understood by me.

3. That the statements made in paragraph no. 3 are true and correct to the best of my knowledge and belief and those made in paragraph no. 5 to 16 are true to information derived from records which are believed to be true and rests are legal submissions before the Hon'ble court.

4. That the annexure are true photo copies of their respective originals.

Motiur Rahman

SECRETARY
Madrasa Islamia Nooria
Pachahi Madhepur Madhubani

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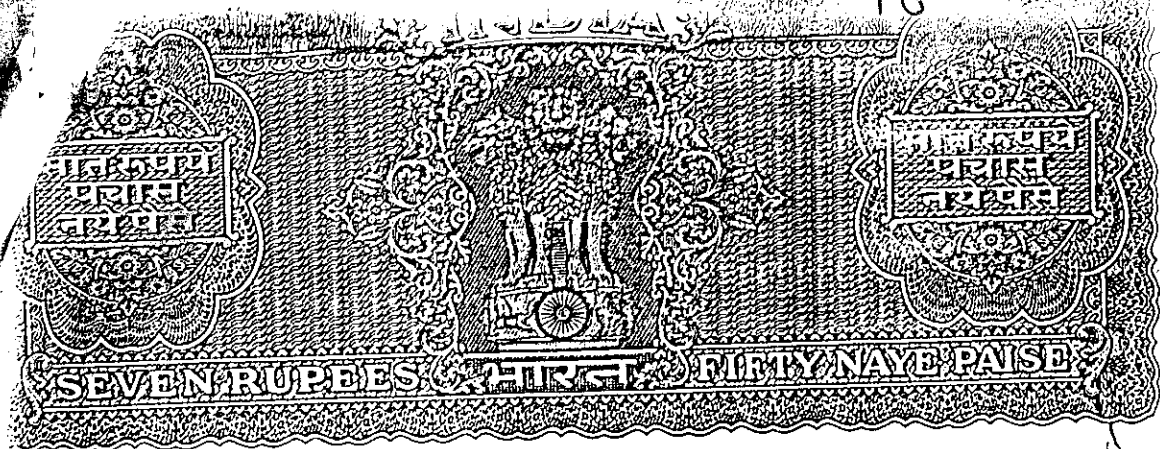
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ଶୁକ୍ର-ବିହାରୀ ନା. ବିନା

ଶୁକ୍ର-ବିହାରୀ ନା. ବିନା (ମୂଲ୍ୟ 2919417- ରୁ
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ଶୁକ୍ର-ବିହାରୀ ନା. ବିନା (ମୂଲ୍ୟ 2919417- ରୁ
 ପ୍ରାୟ 20000 ଟଙ୍କା ଶୁଳ୍କ- ମଧ୍ୟମ-ପ୍ରାୟ 10000 ଟଙ୍କା
 ବିହାରୀ- (ମୂଲ୍ୟ ବିନା) ଶୁଳ୍କ- ପ୍ରାୟ 5000 ଟଙ୍କା
 ମଧ୍ୟମ- ପ୍ରାୟ 10000 ଟଙ୍କା- ଶୁଳ୍କ- ପ୍ରାୟ 5000 ଟଙ୍କା
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ଶୁକ୍ର-ବିହାରୀ ନା. ବିନା (ମୂଲ୍ୟ 2919417- ରୁ
 ପ୍ରାୟ 20000 ଟଙ୍କା ଶୁଳ୍କ- ମଧ୍ୟମ-ପ୍ରାୟ 10000 ଟଙ୍କା
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 ମଧ୍ୟମ- ପ୍ରାୟ 10000 ଟଙ୍କା- ଶୁଳ୍କ- ପ୍ରାୟ 5000 ଟଙ୍କା
 ଶୁଳ୍କ- ପ୍ରାୟ 10000 ଟଙ୍କା- ଶୁଳ୍କ- ପ୍ରାୟ 5000 ଟଙ୍କା



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T.L

H. L.

(65)

वक्फ अल्लाह अलल औलाद
मिनजानिब हाजी मोलवी हाजी मोहम्मद अली पे० करामत अली मरहूम

1. नाम मोकीर, मोलवी मोहम्मद अली पे० करामत अली मरहूम जात मोमीन पेशा खेती साकीन मौजे कसमा पचही प्रगाना पचही ईलाके थाना-मधेपुर जिला दरभंगा।
2. मोकीर अलैह मस्जिद व वाके मौजे कसमा-पचही प्रगाना पचही ओ मौजे मस्जिद व वाके आदिन्यडीह प्रगाना पचही ओ मस्जिद मौजे मधेपुर व पीपड़ा, प्रगाना पचही ओ मदरसा वाके मौजे कसमा पचही मोसूमा मदरसा इस्लामिया नूरया प्रगाना पचही इलाके थाने जात मधेपुर जिला दरभंगा बगैर निगरानी ओ मारफत ओ मोतवल्ली मोहम्मद अली मोकीर खुद
3. किस्म दस्तावेज वक्फ अल्लाह अलल औलाद।
4. मालियत तखमीनन मोबलीग (4000) चार हजार रूपया
5. तायेदात ऐराजी मोन्दर्ज - 21 बिघहा 19 कट्टा 11 धूर पौने तीन कनमा ऐराजी कबजा कास्त कायमी वाके मौजे गढ़गाँव प्रगाना खण्ड इलाके थाना मधेपुर सब रजिस्ट्री झंझारपुर जिला दरभंगा थाना-न०-320 तोजी न०-6424 बजरये केवाला तारिख 03/03/1948 ई० नवीस्ते मो० सुजा पे० बाकर मियाँ व नाम खुद गढ़गाव रकवा : 20 बिघहा 08 कट्टा 12 1/2 धूर मौजे तपसेना मैत्री प्रगाना पचही इलाके थाना-मधेपुर सब रजिस्ट्री झंझारपुर जिला दरभंगा : 16 कट्टा मौजा मधेपुर पीपड़ा-14 कट्टा 18 धूर पौने तेरह कनमा टोटल 21 बि० 19 क० 11 धूर पौने तीन कनमा।

नोट :- असल दस्तवेज वक्फ कर्ता के घर पर मौजूद है।

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29/1/02

भारतीय वक्फ बोर्ड (नियोजन)
दरभंगा प्रभाग, दरभंगा

वकफनामा व वसीयत नामा

66

जनाब हाजी मोहम्मद अली साहब मरहूम व मगफूर

तू हियातेय नापायदार का कोई ठिकाना नहीं के कब और किस वक्त रूह कालीब से प्रवाज करके बतरफ जावेदानी रवाना हो जाये। मन मोकीर ने जिस सारी जायदाद व कुअते बाजू खुद हासील किया और अपने औलादो वो मोतअलेकीन को जो बसुदे सरह मोहम्मदी मुसतहक थे दे दी मगर अपनी आकबत के बहबुदगी के लिए कुछ नहीं किया वो वाजेह दिली खाहिश हुई के बनी कोई आकबत कुछ ऐसा सामान कर जाऊं के जिस से सबाबे जारिया मन मोकिर को हासील होता रहे चुनानचे मन मोकिर ने एक मदरसा पोखता व सकुनत खुद व एक मस्जिद पोखता निज्द सकुनत खुद वास्ते रफाहेआम मोरत्तब किया एक मस्जिद व मौजे अदित्यडीह और एक मस्जिद पोखता व मौजे मधेपुर टोला पीपड़ा वास्ते रफाहे आम के तामिर करा दी है जो हनोज बजेरे निगरानी मन मोकिर है और तमाम की देख-भाल मन मोकीर खुद वो बजरीये अमला मजाज करता आ रहा है मगर मन मोकीर को उस के मुस्तकिल इन्तेजाम वो मुस्तकबिल के भी जरूरी वो लाजमी है ताके ताकयाम मस्जिद वो मदरसा इन्तेजाम बहुसने खुबी चराग बत्ती मोअज्जीन वा मोदररिस का हुआ करें इस लिए मन मोकिर व खुश रजाये वो रूगबत बहालते सेहत जातो सबात अकील बैगेर तरगीब वो तहरीस दुसरो के अकरार सालेह करता हूँ वो लिख देता हूँ के

(1)

जब मन मोकिर वाहयात रहूंगा जिस तरीके पर मन मोकिर इन्तेजाम करता आ रहा हूँ करता रहूंगा इस से किसी भी वारिसान कायम मोकामयान मन मोकिर के बैगेर ऐजाजत मन मोकिर कोई भी रद्दो बदल का इसतेहकाक हासील नहीं है और न होगा।

(2)

बाद ममात मन मोकिर जो औलादे सालेह मन मोकिर होगा वो मुनतजीमकार मदरसा वो मस्जिद का होगा उसकी निगरानी इस तौर पर रहेगी के कुल मस्जिद को साल में एक बार उमदा तौर पर मरम्मत कराये रोजाना के चिराग बत्ती का इन्तेजाम मुस्तकील तौर पर हुआ करे जहाँ मोअज्जीन मोकरर करने की जरूरत हो करें मदरसा में माकुल मोदररीस का इन्तेजाम को और जिस तरिके पर मदरसा चल रहा है उस से भी बेहतर तारीका पर आमदनी की हैसीयत से करें पांच असखाश का एक बोर्ड हो जिस में बस्ती के ईमानदार सख्श मोनतखब कर लिये जाये और बाजाबता हर कारबाई खुले आम की जाय।

20/01/07
ममारी उप निदेशक (नियोजन)
इरमंगा प्रमण्डल, द (मना)

(3)

ऐराजी मोनदरजे खाने न०-5 की जो आमदनी हो वो मोनदर्ज रजिस्टर हो और अखराजात भी मोनदर्ज रजिस्टर किया जाय तीनों मस्जिद व मदरसा के इन्तेजाम के बाद जो सरपलस हो उससे ऐराजी में तरक्कीयात का जरिया निकाला जाय और यही सील-सीला ताक्यामत कायम रहे।

(4)

किसी भी मोतावल्ली व मुनतजीमकार को एक खरमोहरा अपने जात या खानादारी में खर्च करने का हक नहीं है वो न कभी हो सकता है अगर गाहे वो जमाने ऐसा पाया जाये तो बोर्ड को अखतीयार होगा के दिगर औलादे मनमोकीर उस जगह मुकरर कर दे उस में किसी को कोई हक कुछ भी करने को नहीं होगा लेकिन जो भी मुनतजीमकार मोकरर किये जायेंगे वो मनमोकिर के खानदान से होंगे बसरते के दिगर असखाश को मोतबल्ली या मोनतजीमकार होने का कोई हक हासील नहीं होगा और ने बोर्ड का फैसला इस हालत में बरूए आदालत जायज तसववर समझा जायेगा।

(5)

बोर्ड के हर मेम्बर को ये हक हासील होगा के वह जब वक्तन-फवक्तन चाहेगे आमद व खर्च का हिसाब देखा करें गें और मोनासीब रायजनी किया करेंगे।

(6)

ऐराजी मजकूर के आमदनी से ऐराजी मजकूर का लगान साल ब साल अदा किया जायेगा ताकि इस गजन्द से ऐराजी पाको साफ रहे उसके पैदावार कराये जाने में जो अखराजात हो गा वह मुस्तकील तौर पर अलग रखा जाये गा इस के बाद जो पसमान्दह रहे गा उस से बाकाये काम जिस का जिकर कबल कर चुका हूं अमल दरामद किया जाये गा।

(7)

अगर खुदा न खासता किसी वक्त वो जमाने में मेरे खानदान में कोई ऐसा सख्खा न रहे के जिस से इन्तेजाम न हो सके और वो बदनजमी बढ़ने लगे तो बोर्ड को अखतीयार होगा के कुल इन्तेजाम बजरये बोर्ड ही चलाया जाये। और बोर्ड बस्ती व मदरसा के पन्द्रह अस-खाश दयानतदार पर मुस्तमील किया जाये या और कुल बोर्ड के राय जनी पर काम मुबनी होगा

(8)

इस वास्ते ये चन्द कलमात बतौर वक्फ अल्लाह लिख दिया के वक्त पर काम आवे

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29/01/07
मनाये व निवेदन (निर्णय)
शरमंगा प्रमण्डल, दरमंगा

