

(1998) 08 PAT CK 0070

In the Patna High Court

Case No : C.W.J.C. No. 8239 of 1990 and MJC No. 1841 of 1992

Anand Kumar Bajaj

APPELLANT

Vs

The State of Bihar Ors.

RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 32

Citation : (1998) 3 PLJR 446

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Bhupendra Narain Sinha and Shailendra Kumar, for the Appellant;
R.C. Thakur, for Respondent Board, S.B.N. Singh, for State B.P. Verma, for
Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—The prayer in the writ application is to quash the notification dated 3rd December, 1990 of the Bihar State Board of Religious Trust contained In Annexure 1, constituting committee for the management of Sh Manik Ram Baidya Nath Dharamshala at Nirmali in the district of Saharsa in exercise of its power u/s 32 of the Bihar Hindu Religious Trust Act, 1950 (hereinafter referred to as "the Act").

2. The claim of the Petitioner is that his ancestors had constructed the Dharamshala and the same is being used for private ceremonial functions of their own family which is known as "Bajaj family". According to the Petitioner, the public has got no right to use the said building for any purpose without taking permission from the trustees. Earlier the Board had asked the trustees to submit budget and return under the provisions of the Act, In reply to which It was claimed that the Act had no application to the said Dharamshala as it is not a religious trust "within the meaning of the Act. However, it is stated that the Petitioner on pressure from the Board and threatening to initiate criminal proceeding for not submitting the budget and return of the said Dharamshala

submitted the return and budget on which the Board fees was fixed, which is admittedly being paid by the Petitioner. The Petitioner claims to have been coming in possession after the death of his father and, according to him, his other co-sharer had no interest in the same whatsoever. It is alleged that one Ratan Kumar Sharma filed a petition before the Board alleging that the Petitioner is mismanaging the affairs of Dharamshala, whereafter the board asked the Anchal Adhikari to make enquiry into the matter and to send a report. The Anchal Adhikari submitted the report on 22.6.1988. The Board thereafter issued the impugned notification.

3. According to the Petitioner, the said notification was issued without giving any show cause or any opportunity of hearing to him which is beyond the scope of the provisions contained In Section 32 of the Act. This fact has been specifically denied in paragraph 16 of the counter affidavit filed on behalf of the Board and its Special Officer (Respondent No. 2 and 3 respectively). It is asserted by the said Respondents that the fact is that the Board, while passing the order u/s 32 of the Act for constitution of the Committee to manage the affairs of the Dharamshala, gave show cause notice to the Petitioner, vide Board's letter No. 5143 dated 8.1.1988 and letter No. 31K and 92 dated 3.10.1988, to avail the full opportunity, but he failed and hence It Is claimed that there Is no laches on the part of the Board in constituting the committee for proper management of the affairs of the Dharamshala. In paragraph 17 of the counter affidavit It is asserted that on 20th April, 1988 Sri Santosh Kumar Bajaj, the previous trustee, had complained against this Petitioner that he sold the land of the Dharamshala without the permission of the Board by playing fraud and cheated the Government by claiming that he was son of Bhola Ram Bajaj. It is stated that on this complaint also the Board had asked for the show cause from the Petitioner, vide letter dated 29.9.1988. but he did not give any show cause. All this made the Petitioner liable "for removal from the trustee.

4. No reply to the said counter-affidavit has been filed by the Petitioner.

5. Mr. Bhupendra Narain Sinha, learned Counsel appearing for the Petitioner initially tried to argue that the Dharmshala in question is not a public trust covered under the provisions of the Act. According to him, the said Dharamshala is purely a private building for the use of Bajaj family for private ceremonial function. The public has got no right to use the said building. However, on being confronted with the Division Bench judgment of this Court in the case of M. Kuer v. President reported in 1968 P.L.J.R. 197 laying down law that the disputed question of fact relating to such claim and counter-claim by the parties cannot be gone into in the writ jurisdiction of this Court, he confined his argument only on the question of non-service of notice upon the Petitioner before the issuance of impugned notification.

6. I am unable to accept the said submission of the learned Counsel for the Petitioner in view of the specific stand taken by the Respondents in paragraphs 16 and 17 of the "counter affidavit, to which no reply has been filed on behalf of

the Petitioner. According to Mr. R.C. Thakur, learned Counsel appearing for the Board, the Petitioner was given notice before framing of the scheme by the impugned notification.

7. It was then submitted by Mr. Sinha, learned Counsel appearing for the Petitioner that the appointment of a committee in exercise of the power u/s 32 of the Act can only take place after the other requirements of this section, including framing and settling of the scheme had been complied with. According to him, by the impugned notification, no scheme has been settled by the Board for proper administration of religious trust.

8. I find it difficult to accept the said submission of the learned Counsel for the Petitioner. It is not the case of the Petitioner that the condition required u/s 32 of the Act is not fulfilled in the instant case before issuance of the impugned notification. The entire case of the Petitioner is that the impugned notification is beyond the scope of the provisions contained in Section 32 of the Act under which the Board is only entitled to settle the scheme and thereafter to constitute a committee. Bare perusal of Annexure 1 shows that the Board has laid down the scheme for proper management" of the Dharamshala and for the said purpose constituted the committee of the persons mentioned therein.

9. Be that as it may, the said person had not been made party in the writ application and as such this writ petition is filed to be dismissed on the sole ground of non-joinder of necessary party. Besides this, I find that in paragraph 26 of the writ petition the Petitioner had admitted that the construction of Dharamshala is in dispute in title suit instituted by the heirs the recorded tenants which is pending for disposal.

10. Under such circumstances and in view of the law laid down in the case of *M. Kuer v. President* (1968 BLJR 197 (supra)), the Petitioner cannot get any relief from this Court. In the present writ petition, especially where the claim of the Petitioner has been seriously disputed.

11. The writ petition is, thus, dismissed but, however, in the facts and circumstances of the case, there shall be no order as to costs.

12. The M.J.C. application which arises out of the interim order passed by this Court in the aforesaid writ has also been heard and is also being disposed of by this judgment. The said M.J.C. application has been filed by the Petitioner alleging wilful disobedience of the interim order and direction passed by this Court of 6.9.1991 staying the impugned order notification (Annexure 1 to the writ application).

13. It is true that vide Annexure 2 to the M.J.C. application, the Anchal Achikari, Nirmali. (opposite party No. 4) issued notice on 9.12.1992, i.e. after the aforesaid interim order was passed asserting that the management of Dharmsha will remain with the administration. In view of the interim order, opposite party No. 4 was not at all justified in issuing the said notice.

14. A show cause has been filed on behalf of opposite parties No. 3 and 4. In paragraph 20 of the show cause it is stated that the moment the authorities, including opposite parties No. 3 and 4 came to know about the pendency of the writ application they have restrained themselves from taking any further action pursuant to the notice, contained in Annexure 2. This fact has been admitted by the learned Counsel for the Petitioner. Opposite parties No. 3 and 4 have also tendered unqualified apology.

15. In view of the aforesaid admitted fact, the apology tendered by opposite parties No. 3 and 4 are accepted and this Court does not" feel persuaded to proceed with the contempt matter any further. The M.J.C. application is, thus, dismissed.

16. However, before parting with these matters, I wish to make it clear that the Petitioner will not be precluded from assailing the validity of the impugned notification in the suit pending and/or by filing a regular suit and any finding/ observation made in this judgment shall not in any manner prejudice the claim of the Petitioner, if raised, in the regular suit.