

(2003) 08 JH CK 0096

In the Jharkhand High Court

Case No : Writ Petition (C) No. 873 of 2002

Brojo Bala Trust and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 21, 21(2), 23(4), 4
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 685

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Banerjee and P.K. Mukhopadhyaya and Rabindra Prasad, for the Appellant; R.S. Majumdar, GA and A. Allam and Pankaj Kumar, for the Respondent

Judgement

Tapen Sen, J.—Heard the parties,

2. In the instant case, the petitioner has prayed for issuance of a Writ of Mandamus commanding upon the respondent authorities to pay perpetual annuity fixed by the State of Bihar under the land Reforms Act at the rate of Rs. 25,602,65 per annum since the date of vesting after deducting the interim payments made to the petitioner to the rate of Rs. 1750/- per annum which was paid till 31.3.1974. They have further prayed for a declaration declaring that the authorities are liable to pay interest at the rate of 18% per annum and to pay interim amount with effect from 1.4.1974 till the date of payment together with interest thereon.

3. The case of the petitioner, namely, Brojo Bala Trust is that it is a Trustee which was called the Brojo Bala Trust Estate and it was created by the Maharani of Hatampur in the District of Birbhum. The petitioner claims to hold power of attorney on behalf of the other trustees. Here at this stage it would be relevant to take note of an intervention application (i.e., I.A. No. 148 of 2002) that has been filed by one Medhabi Ranjan Chakraborty claiming himself to be one of the

trustees and in the intervention application he has made a prayer that he should be added as a petitioner supporting the writ petitioner. Mr. M.M. Banerjee, learned counsel appearing for the petitioner has no objection to the aforesaid prayer. Similarly, Mr. R.S. Majumdar, learned Government Advocate also does not object to the aforementioned application filed by the intervener applicant, consequently, the application for intervention of Madhabi Ranjan Chakraborty is allowed and he is treated to be a petitioner alongwith the existing petitioner.

4. According to the petitioners, the aforementioned Maharani had executed the trust deed in which, the petitioner alongwith others were appointed as Trustees some time in the year 1895. The properties vested in the Trustees for various charitable and religious purposes and there was a provisions of worship of the deity of Sri Gouranga Mahaprabhu. Consequently a temple was installed where charitable and religious functions, e.g., Ratha Yatra, Holl, Jhulan and other associated celebrations of the birth day of Lord Gouranga Mahaprabhu were performed.

5. After coming into force of the Bihar Land Reforms Act, 1950 the Government of Bihar notified that the State described in the schedule including the Brojo Bala Trust vested in the State. After the aforementioned notification, the same became a subject matter of judicial scrutiny in MJC No. 344 of 1952 which was disposed off on 16.12.1952 wherein one of the points in issue was as to whether the State Government had any authority to notify the properties belonging to a religious and charitable trust. It has been stated at paragraph 7 of the writ application that it was ultimately decided and concluded that the Bihar Government had the jurisdiction to notify the taujis of the Birbhum Collectorate in so far as the land appertaining to the tauji falling within the territory of Bihar. It was further directed that full effect should be given to the mandatory provisions of Section 4(F) of the Act and that the State must pay interim compensation to the trustees as per the provisions laid down u/s 23(4) of the Act because otherwise the very object of the trust would suffer.

6. The petitioners have further stated that in terms of Section 21, the Land Reforms Deputy Collector, Dumka made an inquiry in the year 1975 and again on 15.9.1985 and upon perusal of various documents, came to the conclusion that the Brojo Bala Trust Estate was a private trust established in the year 1894. He further held that the Registration Act, 1908 had come much later and therefore, the need to register the present trust was not required and that it was a purely religious trust, whose income was spent on religious and charitable purposes. Consequently, by letter dated 9.10.1985 as contained in Anneuxre 1, he recommended that the trust be identified u/s 21(2) of the Bihar Land Reforms Act, 1950. Subsequently, on 2.9.1986 the Government of Bihar through the Additional Secretary, Department of Revenue and Land Reforms sent a letter to the Deputy Commissioner, Dumka vide Annexure 2 wherein records of the Brojo Bala Trust Estate were asked to be furnished for purposes of identification u/s 21(2) of the Bihar Land Reforms Act.

7. Thereafter a letter was issued from the Officer of the Divisional Commissioner, Santhal Pargana at Dumka addressed to the Deputy Secretary to the Government of Bihar, Department of Revenue and Land Reforms wherein it was indicated that the Government should now take a decision in relation not identification of the trust. The aforesaid letter issued from the office of the Commissioner is Annexure 3 and some of the enclosure therein go to show that at least the officers of the State fixed a sum of Rs. 25,602.65 as perpetual annuity. It also shows that up to 31.3.1974 a sum of, Rs. 38217.90 had already been paid as interim annuity.

8. The aforementioned document, i.e., Annexure 3 is an important evidence clearly showing that at least in the year 1988 when the letter had been issued, the Officers of the State did recognize the existence of this trust and accordingly recommended the fixation of perpetual annuity at the rate of Rs. 25,602.65. Thereafter the petitioner also requested the Deputy Secretary in the Office of the Respondent No. 3 by their letter dated 26.7.1990 (Annexure 4) requesting for early disposal of the matter. In the meantime, the petitioners went on running from pillar to post and post to pillar and went on writing letters after letters but nothing happened. In fact, on 8.10.1993 the Additional Collector, Dumka also wrote to the petitioner vide Annexure 5 inter alia stating that as per the provisions of Bihar Land Reforms Act only one trustee was entitled to payments and therefore all of them were requested to give power of attorney to any one of them so that annual payments could be made regularly to him. This letter goes to show that the Government had already identified the trust u/s 21(2) of the Act. It appears, that even after so many documents which were written by the officers of the State, nothing has been paid to the petitioners save and except whatever amount they received up to 1974 as is evident from Annexure 3. In the meantime the State has also been bifurcated and from the Counter Affidavit filed by the State of Bihar it is apparent that soon after bifurcation, the concerned Department of the Bihar Government has already transferred the relevant files to the Land and Revenue Department, Government of Jharkhand vide their letter No. 1197 dated 27.12.2001.

9. From a perusal of Section 21 of the Bihar Land Reforms Act, 1950 it is apparent that in the case of a trust which has not been annulled under Clause (h) of Section 4 before the first day of January 1946, the Collector shall submit a report after giving opportunity of hearing to all concerned, confining his findings as to whether the trust is genuine or not and he will also furnish his report with regard to the net income etc. to the State Government and the State Government shall pass final orders thereupon. Mr. R.S. Majumdar has drawn attention of this Court to various paragraphs of Counter Affidavit including the statements made in paragraph 19 to the effect that the Additional Collector made a local inspection on 5.10.1996 and submitted a report dated 17.10.1996 to the effect that the trust was not functioning as a trust and that there was only one temple and only one priest whose status was not that of a "Shewait". In the said report, the Additional Collector has also stated that the temple was purely private

and not public. The aforementioned report is Annexure "D" and it is dated 17.10.1996 as has been stated in paragraph 19 of the Counter Affidavit. This document is written after the earlier reports brought on record by the petitioner and that is Annexures 1, 2 and 3. This Court fails to understand as to how the Additional Collector, Dumka made the aforesaid recommendation and/or statements when Annexure 3, which is a letter issued from the office of Divisional Commissioner, shows the existence of a situation which is totally otherwise.

10. Considering the aforesaid rival contentions of the parties, it appears that the petitioners have not been given proper and adequate consideration at the hands of the State-Respondents because they appear to be sitting tight over the matter and notwithstanding Annexure 3, final orders are yet to be passed at the level of the State Government. Here at this stage Mr. R.S. Majumdar pointed out that the petitioners have also filed an identical Writ Application before the Hon''ble Patna High Court on 10.1.2001 and the same is still pending before the said Hon''bel Court, This statement has been made at paragraph 24 of the Counter Affidavit, but this Court does to consider that the petitioner has made any suppression of that fact because at paragraph 22 of the writ petition the petitioners have stated thus :--

"22. That the petitioner filed CWJC No. 3867 of 2000 before the Hon''ble Patna High Court but the same remained pending for hearing and whether the same has been transmitted to this Hon''ble Court or is still lying there could be ascertained and therefore, the petitioner is filing the present application, as on account of non-payment either perpetual annuity or ad-interim compensation, it has become difficult if not impossible to maintain the object of the trust. Hence this writ application."

11. Be that as it may, this writ application is disposed off with the following terms on the condition that the petitioner must first withdraw the Writ Application at Patna. If it withdraws that writ application, then and only then it shall have the liberty to file a fresh representation before the Respondent No. 3 bringing on record documentary evidence showing withdrawal of Writ Application. The representation shall include all documents that have been included in this writ application. It will also include a copy of this order. Upon receipt of the aforementioned representation, the respondent No. 3 shall give receipt to the petitioner and thereafter fix a date giving notice to all concerned and shall decide the matter finally in accordance with law. It goes without saying that the date so fixed by the respondent No. 3 shall not exceed a period beyond six months under any circumstances from the date of receipt of the representation. The entire exercise shall be completed as expeditiously as possible, but definitely not beyond the period of six months as indicated above. It goes without saying that if the respondent No. 3 finds and holds in favour of the petitioners, then they shall also similarly take all steps so that payments including arrears are forthwith released in favour of the petitioners.

The writ petition stands disposed off. No order as to costs.