

(2020) 02 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15159 Of 2019, Interlocutory
Application No. 1 Of 2019

Deveshkant Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28(u), 28(2)(u), 28(2)(j)(iii), 28(2)(j)(v), 28(2)(j)(vi), 28(3), 32, 32(3), 33, 43

Citation : (2020) 02 PAT CK 0001

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Mukesh Kant, Rakesh Kumar Shrivastava, Ganpati Trivedi, Aishwarya Shree

Final Decision : Disposed Of

Judgement

Re.: Interlocutory Application No. 1 of 2019

1. Heard learned counsel for the petitioner and learned counsel for the Bihar State Board of Religious Trusts (hereinafter referred to as the 'Board').

2. The present Interlocutory Application has been filed seeking amendment in the main writ application by adding a further relief seeking quashing of order contained in Memo No. 2848 dated 02.02.2017 of the Administrator of the Board by which the petitioner has been removed from the post of trustee of Shri Ram Janki Mandir, Goraiya Kothi in the district of Siwan.

3. Learned counsel for the petitioner submitted that the original writ petition has been filed to quash the notification no. 3292 dated 25.03.2017 passed by the Administrator of the Board by which a new Trust Committee was constituted. It was submitted that the petitioner was never appointed as trustee by the Board and no trust was ever formed by the Board since 1985. It was submitted that though as the Board has not declared it to be a public trust under Section 28(u)

of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as the 'Act'), the Board does not have the jurisdiction either to remove the petitioner or to constitute a fresh committee.

4. It was submitted that before registration, enquiry is mandatory, which has not been done in the present case. Learned counsel referred to the decision of a Division Bench in *Bishwa Nath Sah v. State of Bihar* reported as 2003 (2) PLJR 743 for the proposition that without serving notice, decision to declare the trust as a public trust cannot be sustained. He further relied upon a judgment in *Pavitra Kuer Thakur Ram Jayaswal v. State of Bihar* reported as 2002 (4) PLJR 578 for the proposition that the Board cannot assume jurisdiction over the property and go into dispute between private parties about title/ownership, and further, that there has to be enquiry even if the property is of religious trust before exercising power under Section 32 of the Act, which in the present case has not been done. He further relied upon the unreported judgment of a co-ordinate Bench in *Daymanti Devi vs. The State of Bihar & Ors.* (CWJC No. 5657 of 1990) dated 10.11.2008 for the proposition that in terms of Section 43 of the Act adjudication is required before declaring it to be a public trust, which in the present case has also not been done. It was submitted that no documents with regard to registration, application and enquiry have been brought on record and the decision thereafter. He also relied upon an unreported decision of a Co-ordinate Bench in *Ram Gopal Das Chela vs. The State of Bihar & Anr.* (CWJC No. 1509 of 2010) dated 25.04.2011 for the proposition that the statutory requirement under Section 28 (2) (u) of the Act has not been followed. It was further submitted that there has been no consideration of the show cause of the petitioner by the Board which is against the principles of natural justice. It was further contended that the same is a malicious prosecution at the instance of the local MLA.

5. Learned counsel for the Board submitted that the contentions of learned counsel for the petitioner are not tenable. It was submitted that right from the year 1959, the local villagers as well as the family members had made a complaint to the Board with regard to mismanagement of running of the temple. In support thereof, he drew the attention of the Court to copies of such complaint. It was submitted that even in the revenue records, the entire property is recorded in the name of the deity and not of the petitioner, which clearly negates the claim that the property is the private property of the petitioner. Learned counsel submitted that the Board finally issued notice to the petitioner on 28.10.2016, and the reply was not found satisfactory. He submitted that a report was also called on the basis of complaint made by a member of the Legislative Assembly and finally the Administrator of the Board under Letter No. 2848 dated 02.02.2017 under Section 28 (2) (j) (iii) (v) (vi), the petitioner was removed as the trustee and the Sub Divisional Officer, Maharajganj was appointed as temporary trustee under Section 33 of the Act. It was submitted that thereafter, the Board under Letter No. 3292 dated 25.03.2017 has constituted a scheme and a fresh Trust Committee has also been appointed, in

which the Sub Divisional Officer, Maharajganj is the ex-officio Chairman and there are 10 other members, for a period of five years. Learned counsel submitted that for the relief claimed in the present writ application, the Act itself provides a remedy of moving before the District Judge of the concerned district under Section 28(3) of the Act with regard to removal of the trustee and under Section 32(3) with regard to constitution of the Committee. It was further submitted that as far as the property being a public property, the remedy is only to approach the competent Civil Court. For such proposition, learned counsel relied upon a decision of a Division Bench in Bihar State Board of Religious Trust v. Sri Raja Prasad Agrawal reported as 2009(2) PLJR 906, for the proposition that any person aggrieved by any decision of the Board as to whether it is a public or a private trust is subject to final decision by the competent Court and the aggrieved person has to approach the competent Civil Court for annulling such order of the Board. It was further submitted that another Division Bench in M. Kuer v. President reported as 1968 BLJR 197, has held that the Legislature by the Act has created the Board and in effect conferred on it initial jurisdiction to decide whether a religious trust is public trust or a private trust but since there is no provision in the Act making the decision on the jurisdictional question final, it will always be open to the aggrieved parties to challenge the same in an appropriate proceeding before the Civil Court.

6. By way of reply, learned counsel for the petitioner drew the attention of the Court to Annexure 5 of the rejoinder filed on behalf of the petitioner to indicate that the chronology of the Chelas of the trust is incorrect as in the enquiry done by the Circle Inspector, such fact has not come to light. It was further submitted that the enquiry made by the Inspector of the Board on 30.03.2016 was behind the back of the petitioner without any notice to him. It was further contended that the onus is on the Board to prove that it is a public trust and, thus, they are required to move before the Civil Court and not the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that in view of the relief prayed for in the writ application, as also amendment sought in the Interlocutory Application No. 1 of 2019, the matter is not required to be gone into on merits by this Court, for the present. The main contention which learned counsel for the petitioner has raised before the Court; that the property itself is not a public trust, cannot be raised, for the reason, that relief has not been claimed of holding that the trust in question is not a public trust and for cancellation of its registration.

8. From the records itself, it is clear that right from the beginning, in the communications/notices sent to the petitioner and even otherwise, the registration of the property in question, as a public trust numbered 2943/1985, has been indicated, which is proof of the fact that the property in question has been recorded as a public trust and registered with the Board bearing the said number. Thus, once there is a registration of the year 1985 with the Board of the

property as a public trust, the jurisdiction and power of the Board to form a Trust Committee and for removing a trustee is obviously vested in the Board. The Court would only indicate here that since there is no challenge to the registration itself by the Board of the property as a public trust, the Court has no occasion to go into that aspect. Further, even with regard to the correctness of the allegations made with regard to mismanagement of the trust property by the petitioner, the Court has not applied its mind with regard to whether such allegation is bona fide or not. Such issues are based purely on facts which in the present proceeding, at this stage, cannot be gone into. Further, as has rightly been pointed out by learned counsel for the Board, all such issues, including the factum of the property being private or belonging to religious trust as also with regard to removal of a trustee and reconstitution of the Trust Committee, are all amenable to the jurisdiction of the competent Civil Court where evidences can be led in support of rival contentions and then a finding can be arrived at.

9. Reliance of learned counsel for the petitioner on the decision in Pavitra Kuer Thakur Ram Jayaswal (supra) is misplaced for the reason that there the Board after holding that the property was a trust property had proceeded under Section 32 of the Act to frame a scheme which the Court had held not permissible. In the said case, it was held that unless it is firstly held to be a religious trust, the Board cannot exercise jurisdiction over private property under its own whim, arbitrariness or caprice. In the present case, at the cost of repetition, such eventuality has already occurred way back in the year 1985, when the property has been registered as a public trust by the Board. Thus, the facts of the present case being different from that of Pavitra Kuer Thakur Ram Jayaswal (supra), the decision in the said case will have no bearing on the present case.

10. Similarly, in Bishwa Nath Sah (supra), under Section 43 of the Act, the Board having straightaway held the petitioner institution to be a public trust without giving an opportunity to the petitioner to have the issue determined, the impugned order had been set aside. Again, at the cost of repetition, the Court would only indicate that in the present writ petition, challenge is not to the Board having registered the property as a public trust in the year 1985 and, thus, the aforesaid decision also has no bearing on the present case.

11. Coming to the case of Daymanti Devi (supra), the Court had recorded that there was nothing on record to show that the property was a public trust over which the Board could exercise authority. Again, the Court could indicate that in the present case, the property being a public trust is not in controversy and most importantly, such fact has not been challenged in the present writ application and once there is a formal registration number of the year 1985, with regard to the property, it has to be accepted that the said property is a public trust till the time such registration is not interfered with. Thus, the said decision also is of no help to the petitioner.

12. In the case of Ram Gopal Das Chela (supra), the Court has noted that the Board in its own counter affidavit had stated that the issue with regard to

whether the trust was a private trust or public trust had not yet attained finality under Section 28 (2) (u) of the Act. In the present case, such is not the fact as the issue is no more in controversy as admittedly, the property has been registered by the Board bearing Registration No. 2943 of the year 1985 and, thus, the decision of the said case also would not help the petitioner in the present case.

13. For reasons aforesaid, taking an overall view in the matter, especially the fact that the registration of the property as a public trust by the Board in the year 1985, neither being interfered with nor even challenged in the present proceeding, the subsequent removal of the trustee as also reconstitution of the Trust Committee have to be assailed before the Competent Civil Court in a duly constituted proceeding, in accordance with law, both as settled by the Courts as well as the provisions of the Act itself.

14. Accordingly, the writ petition as well as the Interlocutory Application No. 1 of 2019, stand disposed off with the aforesaid observations.