

(2024) 03 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10888 Of 2019

Dr. Nand Kumar Singh

APPELLANT

Vs

District Magistrate, Samastipur

RESPONDENT

Date of Decision : 14-03-2024

Acts Referred:

Constitution of India, 1950 — Article 12
Indian Penal Code, 1860 — Section 147, 148, 149, 323, 341, 354, 379, 427, 452,
504, 506

Citation : (2024) 03 PAT CK 0042

Hon'ble Judges : Anjani Kumar Sharan, J

Bench : Single Bench

Advocate : R.K.P. Singh, Bal Bhushan Choudhary, Md. Harun Quareshi, Pramod Kumar Sinha, Arvind Kumar Sharma, Chetan Kumar, Chhitiz Parashar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent nos.5 to 12.

2. This writ application has been filed for the following relief(s):-

“(i) To quash the alleged Office order, if any, purported to have been passed by the respondent no.3 as S.D.O., Rosera and as published in Dainik Jagran Newspaper dated 18.07.2018 whereby the petitioner and other bonafide Trustees have been restrained from entering into School Campus and his quarter located therein and administer in the Sundari Devi Saraswati Vidya Mandir High School, Bataha.

(ii) To quash the alleged order if any purported to have been passed by the Respondent No.3 as SDO Rosera and as published in Newspaper Prabhat Khabar dated 28.07.2018 in pursuance of which the School was opened on seven conditions and incharge Principal was deputed.

(iii) The Respondent No. 1 and 2 be directed to provide Police protection to the

Petitioner and to ensure the implementation of the Resolution dated 09.07.2016/18 duly passed by the Board of Trustees of Ram Krishna Education Trust in relation to the administration of the School.

(iv) The Respondents Ist and IInd set be prohibited from interfering with the function of Petitioner as Chief Trustee of the Trust and to administer the smooth and proper functioning of the said School in any manner whatsoever who are members of the Trust and advisory body only by issuing proper direction in this behalf.

(v) Any other relief or reliefs be also granted to the Petitioner."

3. The brief facts of the case is that one Dr. Ram Swaroop Mahto, s/o Ram Krishna Mahto, Resident of Village-Batah, P.O. Udaipur, P.S.-Rosera, District-Samastipur was a renowned Medical Practitioner of his time. He was married to Smt. Nirmala Devi who out of the wedlock gave birth to a female child only. He named his daughter Binita Kumari and got her married with Dr. Nand Kumar Singh (the petitioner). He had considerable landed properties at Village-Bataha and after some time migrated to United Kingdom for his better professional career and after some time he became citizen of England. He got job there and married with an English Lady named Janet in England but he used to visit India regularly. Dr. Mahto decided to do benevolent work for the upliftment of education in his village and locality and as such he created a Private Trust on 07.03.1995 in the name and style "Ram Krishna Education Trust" in the memory of his father, by creating original corpus of Rs.11000/- out of his own fund and in this behalf he executed a registered Deed of Trust.

4. He nominated total eight persons in the Trust Deed to act as Trustees of the Trust and he himself became the life long Chief Trustee, by virtue of being the Author of the Trust. He decided to donate land to the Trust and also assured to generate fund for the Trust by his personal donation as well as donations collected from other donors in India and abroad. Dr. Mahto as author of the Trust nominated Sri Ramendra Rai as Secretary, Sri Harihar Mahto as President and Sri Arun Kumar as Treasurer of the Trust and they were authorized to open account in Canara Bank Branch Kadam Kuan in the name of the Trust. He himself became life long Trustee or his any representative in India. Dr. Mahto in furtherance of the objective of the Trust decided to start a residential School of Boys and Girls in his village home upto Class X in the name and style "Sundari Devi Saraswati Vidya Mandir" in the memory of his Late Mother Sundari Devi. In order to establish the said School, Dr. Mahto donated his entire land except residential House and homestead land of Bataha and also purchased some land from his co-villagers through registered sale deeds in the name of Trust.

5. Thereafter, Mr. Ramendra Rai, in the capacity of the Secretary of the Trust leased out land measuring 9.60 Acres to the School named above by a registered deed of lease dated 7.01.2006 for 95 years on a nominal rent of Rs.5000/- per annum upon which School Building including office, Girls' Hostel and Residential

Quarters of Principal and Chief Trustee cum Chairman of the Trust and the School were constructed by the fund mainly donated by Dr. Mahto. He also created fund and assets for the Trust out of donation collected by him from donors of U.K. & his friends and relatives in India. Such donations were partly routed through the Trust and partly invested in construction of building and establishment of School directly under able guidance, control and supervision of the Chief Trustee Dr. Mahto. After construction of building aforesaid, the School began to function and the Trust through the Board of Trustees headed by the Secretary and President Sri Harihar Mahto began to function and the Trust continued to administer the School. As per Trust Deed, wish and desire of Dr. Mahto, the Secretaries of three registered Societies, Respondents No. 5 to 8 in the official capacity as ex-officio members were made Trustees as guiding body having experience in the field of education but at no point of time the said Societies had any role to create Trust, its corpus and construction of School building including its full fledged establishment. A meeting of Board of Trustees of Ram Krishna Education Trust was held on 27.02.2000 and it was resolved unanimously to add the names of two more persons as members of the trust board namely Sri Ram Bahadur Singh of Singhiya and Jai Prakash Verma of Rosera. Some provisions regarding aims and objectives of the Trust and role of Vidya Bharti were also added in the Trust Deed as Resolution No.2. Thus the said resolution dated 27.02.2000 passed unanimously by the Board of Trustees amended the original Trust Deed and became part of it.

6. The Author of the Trust by his hand written letter dated 7.07.2004, sent from Bath U.K., nominated the petitioner to be the Chief Trustee. The letter was addressed to Mr. Mahendra Mahto (the then Treasurer of the Trust) wherein he specifically mentioned that after his death, senior member of his family will be the Chief Trustee as there is no suitable person in his family to become a Chief Trustee except Dr. N.K. Singh, who is a forceful character to be the Chief Trustee. He in categorical terms nominated Dr. Nand Kumar Singh (the petitioner) as Chief Trustee after his death. He also sent similar letter to Mr. Ramendra Rai, the then Secretary of the Trust with a direction to nominate Dr. N.K. Singh as Chief Trustee in the meeting of the Trust Board also. Unfortunately Dr. Ram Swaroop Mahto died on 19.11.2006 and to condole his sad demise a meeting of the Trust was convened on 30.11.2006 at Bataha School in which condolence resolution was passed and the petitioner was made the Chief Trustee by the members present there.

A meeting was conducted under the Chairmanship of the petitioner as the Chief Trustee of the Trust. On 10.01.2007, a meeting of Trust was held in the School campus at Bataha under the Chairmanship of the petitioner in which out of Eleven trustees, eight trustees were present and four other invitees were also present by which the resolution dated 30.11.2006 passed under the Chairmanship of the petitioner was affirmed and other decisions were also taken accordingly. The meeting of the Trust was convened on 09.07.2018 as per schedule under the Chairmanship of the petitioner as Chief Trustee in which

altogether eight Trustees participated and unanimously resolution was passed. As per resolution dated 09.07.2018, the then Principal Devanand Doordarshi was directed to be removed from the post of Principal of the School and hence the petitioner immediately carried into effect the said resolution and issued letter No. 54/2018 dated 09.07.2018 removing the Principal Devanand Doordarshi which was served immediately upon him through Devendra Kumar. Hence, the services of Devanand Doordarshi were removed and from 09.07.2018, he ceased to be the Principal of the School. One of the trustees, Dilip Kumar Jha who was Ex-Secretary of the Trust also raised grievance by letter dated 09.07.2018 and 10.07.2018 with false and baseless contentions which was suitably replied by the petitioner on 11.07.2018 explaining the prevailing situation therein.

7. The respondent nos.5 to 8 and other associates having grudge against the petitioner began to devise ways and means to dislodge the petitioner from exercising the power of superintendence and control over the School as well as the Trust and with that motive, they entered into unholy alliance with some of the local bad elements. In pursuance of such conspiracy Binod Kumar, the Respondent No. 12 and his criminal associates committed several offences of assault, trespass mischief etc. in the School on 16.07.2018 giving rise to Rosera P.S. Case No. 262 dated 16.07.2018 under Sections 147, 148, 149, 323, 341, 452, 354, 379, 427, 504, 506 I.P.C. As a matter of fact the Petitioner after removing the said Principal of the School appointed Smt. Ranjana Kumari, the Respondent No.13 as Principal who informed the Petitioner that she would be getting charge of the office on 16.07.2018 and invited the petitioner to be present at the auspicious occasion. Accordingly the petitioner along with Shyam Kumar (Trustee) and Smt. Vinita Singh (Treasurer) and three staffs of the petitioner went to the petitioner's official residence located within the campus of the said School at about 8 A.M. on 16.07.2018. While the petitioner was awaiting call from the office of Principal, he heard hulla and witnessed Manoj Kumar (Teacher) and Subodh Kumar (one of the relative of Mrs.Ranjana Kumari) in injured condition coming towards residence of the petitioner. They disclosed that Binod Kumar and Devanand Doordarshi Ex-principal have assaulted Mrs. Ranjana Kumari and her husband Mahendra Mahto brutally. After sometime they along with Suresh Mahto, Kumar Lallan Singh and others as well as students of the School attacked the gate, window and door of the petitioner's residence by rod, stick and bricks. They broken the rear door and set fire also. In the meantime Shailendra Kumar Mishra along with other teachers and students continuously instigated the miscreants. They also damaged the Jeep and looted Rs.45,000/- Cloth, Laptop, Resolution Book of the Trust containing Resolution dated 19.07.2018 which were kept in a suitcase. The petitioner, prior to the said incident had apprehension of untoward happening, due to which he had already lodged a Sanha on 21.02.2018 itself, and such apprehension became reality by the said incident. Petitioner later on came to learn that the miscreants at the behest of Devanand Doordarshi and Binod Kumar had already brought the local police in their collusion from before and managed to get a F.I.R. registered

against the petitioner, his wife, relatives and others.

8. The petitioner on going through the Newspaper Dainik Jagran dated 18.07.2018 learnt that SDO, Rosera imposed 144 Cr.P.C. in and around the campus of the School restraining all concerned persons from going in the campus of School.

9. While the petitioner was in custody in Sub Jail, Rosera, he as Chief Trustee-cum-Chairman of the Trust made a request to the Sub Divisional Magistrate, Rosera by written letter dated 19.07.2018 to not open the school in any condition and to not allow Devanand Doordarshi to run the School because he shall misuse the fund of the School. Thereafter, the SDM issued direction to reopen the School in respect of which local newspaper Prabhat Khabar dated 28.07.2018 published news, mentioning that on seven terms and conditions, the SDM has permitted to resume the classes of the student by deputing an alternative Principal.

Despite request made on behalf of the Petitioner, the School was reopened and the teaching of the students was started but in a hap hazard manner the seven conditions imposed by the SDO were violated by the Respondents except B. D. Mahto and they illegally began to misuse the fund of the School and also started making illegal appointment. Not only that Dilip Kumar Jha in collusion with some of the Trustees also fabricated a duplicate so called Trust in complete contravention of the wish and desire of the author of the Trust as contained in the Trust Deed and amendment made therein. They succeeded in misappropriating about Rs. 48 lakh of the School fund by diverting the school income in to the Hostel Boys Caution Money Account to enable the Principal and Mr. Shailendra Mishra to withdraw the same easily. The petitioner informed the District Magistrate, Samastipur by letter dated 31.08.2018 regarding the entire episode with a request to permit the petitioner to administer the school and to provide proper protection to him.

10. The petitioner came to learn that Mr.B.D. Mahto was made in-charge Principal to run the School by the order and direction of the S.D.O., Rosera and accordingly, he took charge of the office and began to function as in-charge Principal. Hence the petitioner as Chief Trustee-cum-Chairman of the Trust by e-mail dated 15.10.2018 directed the Principal in-charge to send income and expenditure account of the School. On 23.01.2019, the petitioner again made request to D.M., Samastipur and S.D.O., Rosera by two separate letters informing that despite repeated requests the in-charge Principal did not further the account of income and expenditure of the School and despite passing of six months, the proper charge of the administration of the School has not been handed over to the petitioner. He again by way of reminder reiterated his same request before the SDO, Rosera by sending a letter dated 08.03.2019 with a copy to D.M., Samastipur, Branch Manager, Canara Bank, Rosera in which recently a new account in the name of School has been opened illegally by Devanand Doordarshi and his associates for information and doing the needful. But they are sitting

tight over the matter without any justification.

11. It is submitted by learned counsel for the petitioner that from the facts and circumstances narrated above, it is crystal clear that the petitioner is a duly nominated and appointed Chief Trustee of the said Trust by the Author of the Trust and he is fully authorized and privileged person to administer the said School in such capacity without any interference by any person or Authority including the respondents. But the action of the respondents of 1st set and their complete silence over the matter for eight months had kept the petitioner and other bonafide Trustee out of reach of the School due to which the condition of the School, its management and administration got deteriorated day by day and quality of teaching had been affected. It is submitted that so far as removal of persons from the Trust is concerned, it is evident that Mr. Ramendra Rai and others who were ex-officio members of the Board of Trustees ceased to be such members as they lost their office by virtue of which they held the status of Trustees automatically and hence there is no question of illegal termination or recommendation for termination of those persons. So far as letter of termination is concerned, it is stated that several villagers of the village Bataha made specific complaint against some of the Trustees and on the basis of such complaint, the petitioner served a letter dated 31.12.2010 upon them inviting their show cause in the context of their anti social as well as anti Trust and anti School activities but they deliberately did not respond. Thereafter, two reminder letters were sent but no heed was paid and then lastly, by letter dated 25.02.2011 they were terminated in pursuance of due resolution adopted by the Board of Trustees. It is further submitted that the Board of Trustees were fully authorised to appoint another person as Principal of the School which is evident from the fact that the author of the Trust has unbridled power to nominate Chief Trustee or any Trustee or to remove any one of them. The petitioner was never removed from the Board of Trustees nor the Board of Trustees has got any right or Authority to remove him. Hence, there is no question of withdrawal of petitioner from the management.

12. It is further submitted that the Trust is the creator of the High School at Bataha for boys and girls and in such capacity it has got over all control on the Sundari Devi Saraswati Vidya Mandir school, Bataha to which none of the respondents had any concern after establishment of the school and role of the respondent no.5 was limited to guide and supervise the school and nothing more. Mr. Dilip Kumar Jha with due conspiracy to grab the institution made a false statement that the proper remedy is Civil Suit for the settlement of the dispute of the Chief Trustee. It is true that Government or the State has no role to play in the context of the Trust as well as school. The petitioner is defacto and dejure Chief Trustee of the said Trust as per the wish, desire and command of the author of the Trust. Learned counsel for the petitioner has relied upon the judgment of the Apex Court as reported in AIR 1981 SC 2198, 2004 (4) PLJR 34 and 1988 BLJR 325.

13. A counter-affidavit is filed on behalf of the respondent nos.5 to 12 and it is submitted that the writ application is itself not maintainable. The petitioner has filed this writ application for the following main relief(s):-

“(a) Quashing of the order if any (neither date of order mentioned nor annexed with the writ application) passed by respondent no.3, the Sub-Divisional Officer, Rosera purported to be published in Dainik Jagran News Paper dated 18.07.2018.

(b) Quashing of the order, if any (neither date of order mentioned nor annexed with the writ petition), passed by the respondent no.3, the Sub-Divisional Officer, Rosera, as published in News Paper Prabhat Khabar, and

(c) Passing of prohibitory order against respondent 1st (respondent no.1 to 4) and respondent 2nd set (respondent nos.5 to 12) restraining them from interfering with the function of the petitioner as Chief Trustee-cum-Chairman of the governing body of Ram Krishna Education Trust, Patna, in short the Trust, under which Sundari Devi Saraswati Vidya Mandir, Batha is being run.”

14. Learned counsel for the respondent nos.5 to 12 submits that the petitioner vide relief no.(c: iv) of the writ petition seeks virtually a declaration of himself to be the Chief Trustee of an educational institution in which the State has no role to play meaning thereby for enforcement of his private right which can't be granted since the Trust and the School is not a State within Article-12 of the Constitution of India as the law is well settled on this issue by the Hon'ble Apex Court in the following decisions:

(a) Committee of the Management of DPS V/s M.K. Gandhi as reported in 2015 (17) SCC 353 (para-5).

(b) Trigun Chandra Thakur V/s The State of Bihar & Others, as reported in 2019 (7) SCC 513 (para-5).

(c) St. Mary's Education Society V/s Rajendra Prasad Bhagav, as reported in 2023(4) SCC 498 (para-66,75).

15. The Claim of the petitioner being a Chief Trustee is a disputed question of fact, the petitioner in support of his claim has annexed letter dated 07.07.2004 (Annexure-3 of the writ petition) written by the author of the Trust namely Ram Swarup Mahto @ Dr. R.S. Mahto, father-in-law of the petitioner, who was said to nominate the petitioner as Chief Trustee after his death but soon thereafter under letter dated 01.11.2004 (Annexure-R-5-A of the counter affidavit of respondent nos.5 to 12), which was chaired by the author of the Trust himself, vide Resolution No.15A endorsed the same therefore, petitioner's claim being Chief Trusty is totally unfounded and is a serious disputed question of fact which cannot be gone into and decided in a writ petition as has been held by the Hon'ble Apex Court way back in the case of DLF Housing Construction (P) Ltd. Versus Delhi Municipal Corporation reported in AIR 1976 (SC) 386, para-18 which reads as follows:

'In a case where the basic facts are disputed and complicated question of law and fact depending on evidence are involved, the writ court is not a proper forum for seeking relief. The right course the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merit of the case.'

Similar view has been taken by the Hon'ble Apex Court in subsequent decisions namely in the case of Ragini Sinha Vrs. The State of Bihar, reported in 2020(18) SCC 609 (para-10 and 10.1) and in the case of the Union of India V/s. Punanda as reported in 2021 (10) SCC 690 (para-14).

16. Learned counsel for the respondent nos.5 to 12 further submits that petitioner besides that have sought for quashing of the undated orders alleged to be passed by the learned Sub Divisional Officer, respondent no.3, but the same have not been annexed with the writ petition. The respondent no.3 though in their counter affidavit have annexed, from where, it appears that the same was prohibitory order u/s 144 of the Cr.P.C. which came to an end after the expiry of the statutory period and the same had been passed even on behest of the petitioner, therefore the petitioner can't blame respondent nos.1 to 4 for his own fault and commissions and omissions.

17. Considering the argument of the parties and on perusal of the record, it is clear that there is a private dispute between the parties and present writ application has been filed by the petitioner for the enforcement of his private right, which cannot be granted since the trust of the school does not come under the purview of the State within Article 12 of the Constitution of India and considering the Apex Court judgment passed in 2015 (17) SCC 353 (supra) and 2019 (7) SCC 513 (supra), this writ application is not maintainable.

18. It is accordingly dismissed.