

(1989) 04 PAT CK 0030

In the Patna High Court

Case No : C.W.J.C. No's. 4616 and 5805 of 1987 with C.W.J.C. No. 452 of 1988

Ishwari Prasad Jhunjunwala

APPELLANT

Vs

Bihar State Religious Trust Board, Patna

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28(2), 33
Constitution of India, 1950 — Article 226

Citation : AIR 1989 Patna 349

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : N.K. Agrawal and B.N. Mishra, for the Appellant; A.B. Ojha, for the Respondent

Judgement

S.B. Sinha, J.—These writ petitions involving common question of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. In C.W.J.C. No. 4616 of 1987, the petitioner has prayed for issuance of a writ of certiorari for quashing of the order dated 14-9-1987 and 28-9-1987 and as contained in Annexures 6 and 7 to the writ petition.

3. In C.W.J.C. No. 452 of 1988, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated. 13-10-1987 passed by the respondent No. 2 and as contained in Annexure 5 to the writ petition.

4. In C.W.J.C. No. 5805 of 1987, the petitioner has prayed for issuance of a writ of mandamus commanding upon the respondents, their agents or servants not to interfere with the right, title, interest and possession, of the petitioner over the building of the petitioner situated in Narkatiaganj over plot No. 4 Khasra No. 654 measuring 1 Katha and 1 Dhur (10 decimals).

5. The facts of the case lie in a very narrow compass.

6. The petitioner is the trustee in respect of a Dharamsala known as Satyanarain Bhagwan temple and Dharamsala, Narkatiaganj and Babu Sundermal Dharamshala, Bettiah, District West Champaran. The aforementioned trust was created by the grandfather of the petitioner on 6-1-1946, by executing a deed of gift in favour of aforementioned temple and Dharamshala. In the said deed of gift provisions have been made as to how and in what manner the temple and the Dharamshala are to be managed. In terms of the aforementioned deed of gift, in a meeting held by the Trustees, the petitioner was put in charge for managing the properties of the aforementioned trust. It appears that some disputes arose by and between the trustees and the ex-priest of the temple. The petitioner came to learn that the respondents Nos. 1 and 2 purporting to act on the basis of a report submitted by respondent No. 3, the S.D.O., Bagaha was appointed as a temporary trustee vide order dated 23-7-1987. A copy of the said order has been annexed to the writ petition and marked as Annexure 2 thereto. The petitioner thereafter filed various representations whereupon the respondent No. 2 by an order dated 27-8-1987 stayed the operation of the said order dated 23-7-1987. The said order dated 27-8-1987 is contained in Annex. 5 to the writ petition. According to the petitioner, however, the respondent No. 2 without hearing the petitioner and perusing the documents regarding the temple and Dharamshala again passed an order on 14-9-1987 appointing temporary trustee in relation to the aforementioned temple and Dharamshala contrary to its previous order dated 27-8-1987. The said order is contained in Annexure 6 to the writ petition.

7. According to the petitioner if there had been mis-management in the property in question, recourse could be taken to the deed of gift which in very clear terms contains provisions as to what steps should be taken in case such mis-management is detected.

8. In C.W.J.C. No. 452 of 1988 a counter-affidavit has been filed on behalf of the respondent Nos. 1 and 2.

9. It appears that the said counter-affidavit is absolutely a cryptic one but it refers to a purported application for vacating an interim order of stay filed on behalf of the respondents.

10. According to the said counter-affidavit all trustees appointed by the donor and named in the original deed of trust have expired. except the writ petitioner and one Keshari Lal Jhunjunwala. The respondents in paragraph 11 of their applications for vacating the stay order have further contended that several notices were issued to the petitioner. However, the said notices have not been brought on record.

11. Mr. N. K. Agarwal, the learned Counsel appearing for the petitioner in C.W.J.C. No. 4616 of 1987 and in C.W.J.C. No. 452 of 1988 raised a very short question.

12. According to the learned Counsel for the petitioner the impugned order does not satisfy the requirement of Section 33 of the Bihar Hindu Religious Trusts Act.

The learned Counsel in this connection has relied upon a Division Bench decision of this Court in *Agrawal Dharamshala v. Bihar State Trust Board of Religious Trusts*, reported in 1988 BLJR 212. Section 33 of the said Act reads as follows: --

"Power to appoint temporary trustee --(1) Where there is a vacancy in the office of trustee of a religious trust and there is no one competent to be appointed as trustee under the terms of the deed of such trust or where there is a bona fide dispute as to the right of any person to act as trustee and in the opinion of the Board there is likelihood of a breach of peace or serious interference with the management of the property of such trust or where there is a vacancy caused by the order of the Board passed under Clause (h) of Sub-section (2) of Section 28 of this Act, the Board may, subject to any order of a competent Court appoint any person to act as trustee of the said trust for such period and upon such conditions as it thinks fit.

(2) In appointing a person as a trustee under Sub-section (1), the Board shall, if possible, select a person of the section to which the last trustee belonged."

13. From a bare perusal of the impugned order, as referred to hereinbefore, it is evident that no averment has been made therein as to the existence of the conditions precedent for exercise of the said power. The petitioner has further stated that no opportunity of hearing had been given to him and the said orders are contrary to the terms and conditions mentioned in the deed of gift dated 6-1-1946.

14. Mr. A. B. Ojha, the learned Counsel appearing on behalf of the respondents, on the other hand, submitted that this writ petition is not maintainable as in the writ petition the deity or the trust or the other trustees have not been impleaded as parties thereto. The learned Counsel further submitted that after an interim order of management was passed by this Court, dated 20th October, 1987, whereby and whereunder Sri S. N. Pandey, Special Officer had been directed to exercise strict vigilance and control over the Anchal Adhikari, the income of trust had gone up and at present there is no grievance of any person whatsoever with regard to the management of the property. The learned Counsel therefore, submitted that in this view of the matter no interference by this Court is called for.

15. Mr. N. K. Agrawal, the learned Counsel for the petitioner in reply to the aforementioned contention submitted that the Dharamshalas were constructed for meeting the need of the visitors as also for the purpose of allotting the same to be used for marriages and other social functions. According to the learned Counsel old trustees have been charging a nominal sum for the purpose of upkeep and maintenance of the Dharamshala whereas the temporary trustees and the other officers have been charging exorbitant rate as a result whereof the purpose of construction of Dharamshala has been defeated.

16. Be that as it may, in the facts and in the circumstances of this case, this Court has been called upon mainly to decide the question as to whether the

impugned orders have been passed illegally or not.

17. In *Agrawal Dharamshala v. Bihar State Religious Trust Board*, reported in 1988 BLJR 212 a Bench of this Court (of which I was a member) held as follows :--

" In view of the aforesaid Clause (h) of Sub-section (2) of Section 28 of the Act, the Board can remove a trustee from his office, if such trustee is convicted or if he refuses to act or wilfully disobeys the directions and orders of the Board or is adjudged an insolvent. In the present case it does not appear that at any stage the trustee of the Dharamshala in question, even if it is held to be a public trust within the meaning of the Act had been removed in exercise of the power u/s 28(2)(h) of the Act. It need not be pointed out that power u/s 33 of the Act can be exercised only after removal of the trustee in accordance with Section 28(2)(h) (iii) of the Act, As in the order, which is under challenge, simply it has been stated that the trustee had failed to obey the order of the Board and Anchal Adhikari was being appointed as trustee u/s 33 of the Act, we need not, go into the question as to whether there was any bona fide dispute as to the right of any person to act as trustee and in the opinion of the Board there was likelihood of a breach of the peace or serious interference with the management of the property of such trust The Special Officer before appointing the Anchal Adhikari as trustee of the Dharamshala in question should have first taken the steps in accordance with Section 28(2)(h)(iii) of the Act for removal of the trustee. In such a situation, we are left with no option but to allow this writ application and to quash the impugned communication dated 29-8-87 at the stage of admission itself, after hearing the counsel for the petitioners and the Board."

18. Mr. Ojha, when questioned, had to concede that the impugned orders do not satisfy the requirement of Section 28(2)(h) of the Act nor the conditions precedent for exercise of the power u/s 33 thereof exist.

19. The objection of Mr. Ojha with regard to the non-maintainability of the writ petition on the ground that the petitioner has not impleaded the deity or other trustee or the trust itself as party, is wholly misconceived. In this case the petitioner has asked for issuance of a writ of certiorari for quashing an order passed by the concerned respondents and in this view of the matter, in my opinion, only concerned respondents and the necessary parties to the application. The submission of Mr. Ojha that this Court should not exercise its jurisdiction in view of the subsequent event relating to the enhancement of the income from the properties of the Dharamshala is also of no relevance whatsoever. In terms of Section 32 of the said Act, it is open to the Board to alter the scheme of the trust. It may also take other steps for proper functioning of the trust in accordance with law.

20. In this view of the matter I have no other option but to quash the impugned orders, as mentioned hereinbefore.

21. However, it is observed that in case mis-management of the trust properties

is found by the respondent-Board, it would be open to it to take such legal action as against the petitioner and/or other trustees as is permissible in law and in accordance with law.

22. In C.W.J.C. No. 5805 of 1987, as mentioned hereinbefore, the petitioner has prayed for issuance of an appropriate writ directing the respondents not to interfere with the right, title, interest and possession of the petitioner over the building of the petitioner situated in Narkatiaganj over plot No. 4, Khasra No. 654 measuring 1 Katha and 1 Dhur (10 decimals). According to the petitioner the said property is not a part of the trust property.

23. In this case, however, a counter-affidavit has been filed on behalf of the respondent-Board wherein it has been asserted that in various proceedings the petitioner allegedly contended that the said property belongs to the trust.

24. Evidently, therefore, there exists a dispute as to whether the petitioner is the owner in respect of the said property or not. In my opinion, such a question of title cannot be decided by me in exercise of my jurisdiction under Articles 226 and 227 of the Constitution of India. Such a disputed question of title can be decided in terms of the provisions contained in Section 43 of the Bihar Hindu Religious Trusts Act, 1950.

25. In this view of the matter, in my opinion, it would not be proper for this Court to issue a writ in the nature of mandamus, as prayed for, by the petitioner.

26. In the result C.W.J.C. No. 4616 of 1987 and C.W.J.C. No. 452 of 1988 are allowed and C.W.J.C. No. 5805 of 1987 is dismissed. However, on the facts and in the circumstances of the case there will be no order (as to costs).