

(2023) 10 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5952 Of 2022

Lal Bahadur Jha

APPELLANT

Vs

Bihar State Board Of Religious Trusts

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 10 PAT CK 0026

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Sunil Kumar Verma, Suman Kumar Verma, Amresh Kumar Mishra, Shekhar Singh, Raj Kishore Roy, Prerna Anand

Final Decision : Dismissed

Judgement

1. Heard Mr. Sunil Kumar Verma, learned counsel appearing on behalf of the petitioners and Mr. Shekhar Singh, learned counsel representing the Bihar State Board of Religious Trusts (hereinafter referred to as the 'the Board'). The State is represented by Ms. Prerna Anand, learned counsel.

2. The petitioners by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India are seeking following reliefs:

“(i) Issue writ in the nature of Certiorari quashing therein the order dated 08.03.2021 passed Adhyaksha (president), Bihar State Board of Religious Trusts, patna (Respondent No.2) in connection with the complaint filed by the petitioners dated 02.11.2017 addressed to the president, Bihar State Board of Religious Trusts, Patna in view of being perverse, flawed, erroneous as also arbitrary.

(ii) Issue further a writ in the nature of mandamus/order/direction the concerned upon Respondent/ Respondents commanding therein to enable and allow the petitioners to resume performing Puja and rituals etc. on behalf of their 'yajmans' (devotees) at the Baba Hari Giri Dham Trust/Shrine, a public Trust registered with the Bihar State Board of Religious Trusts, Patna situated under

Garhpura Anchal and Police Station in the district of Begusarai forthwith restoring their rights to earn livelihood in the background of being the descendants of the recorded raiyat, namely, Domi Jha who hold covered under a land property Khata no. 1409, Thana No.136, situated at Mauza- Kumharso in the district of Begusarai which stood recorded in the Khatian as the "SHIVOTTAR VRIT" land by virtue of worship, service and association of the ancestor/s of the petitioners with the Baba Hari giri Dham Trust.

(iii) Issue an appropriate writ/order/ direction upon the concerned respondents for placing on record the file containing the original letter/report dated 30.11.2016 issued by the Revenue Karamchari (Staff) addressed to the circle officer, Garhpura in the district of Begusarai in the background of non-furnishing of the original copy of the letter dated 30.11.2016 by the office of the circle officer, Garhpura in response to the requisition filed by the petitioner dated 03.12.2021 to this effect.

(iv) Any other relief/reliefs to which the petitioners are found entitled to in the facts and circumstances of the case."

3. The petitioners claimed to be descendants of late Domi Jha, have been performing puja and administering rituals and ceremonies at Baba Hari Giri Dham Trust at Garhpura in the District of Begusarai since a long time. In recognition of dedicated services to the trust, a piece of land situated at Mauja-Kumharso, covered under Khata No. 1409, Thana No. 136 in the district of Begusarai was recorded in the khatian in the name of Domi Jha, ancestor of the petitioners as Shivottar Vrit. The temple, as noted above, is a registered public religious trust. A Trust Committee was constituted by the Board and having found satisfactory service the term of the Trust Committee was also extended by the Board vide order dated 25.10.2019 for a period of further five years.

4. The petitioners on being deprived and refrained by the members of the Trust Committee in performing puja and other rituals etc. on behalf of their yajmans filed an application before President of the Board stating all the details and illegal action of the Managing Committee in not allowing them to perform their inheritable rights.

5. The claim of the petitioners is entirely based upon the khatian recorded in the name of Domi Jha, common ancestor of the petitioners as Shivottar Vrit in the record of rights. On receipt of the complaint, enquiry was conducted at the level of concerned Halka Karmchari, who submitted his report in favour of the petitioners, showing late Domi Jha as common ancestors of the petitioners as Shivottardar Pujari. Certain other official documents, including recommendation to consider their case for allowing them to work as Pujari has also been placed before the Board in support of their claim, showing the petitioners as descendants of late Domi Jha, appear to be Shivottardar priests.

6. The claim of the petitioners was duly considered by the Board and after having found that the khatian on the basis of which the entire claim of the petitioners

revolves around, that relates to Kumharso Mauja though the temple (Baba Hari Giri Dham Trust) in question is situated at Gadhpura. It has been found that there is no temple/math at Kumharso Mauja and name of one Narsingh Jha is registered in the register as recipient of rent. It has further been found that from the khatian, it does not appear the name of the petitioners as Shivottardar and moreover certain interpolation was found in the report of Halka Karmchari, annexure-3, wherein in place of Shivottardar ke, "Shivottardar pujari" has been inserted. In none of the documents, the petitioners have been shown as priest and moreover the temple Baba Hari Giri Dham is situated at Gadhpura over Khata No. 190 and 206, and the name of "Shri Jha" has not been entered. On the basis of the aforesaid finding, the claim of the petitioners came to be rejected vide order dated 08.03.2021, which is under challenge before this Court by filing the present writ petition.

7. The petitioners, while assailing the impugned order dated 08.03.2021 have submitted that though the official documents addressed in between the officers and the Board have been doubted but surprisingly the onus has been shifted upon the petitioners to prove the genuineness of the same, against all the cannons of the law. If the Board has had any suspicion over the documents, he can very well ask for the original documents. He further submits that there is no temple at Kumharso and the Khatian in the name of late Domi Jha, refers to the temple situated at Gadhpura, which has been ignored without there being any justifiable reason. Furthermore, no local enquiry was conducted despite the fact that the local persons have filed affidavits in support of the petitioners that they were the pujaris since long in the temple.

8. On the other hand, learned counsel for the Board while refuting the contention of the petitioners has submitted that so far the right of the petitioners is concerned it is not an inheritable right and moreover, from the materials available on record, it appears that the khatian upon which the petitioners are basing their claim is not anyhow connected to the temple in question, which is a public religious trust. The khatian in question relates to temple situated at Khmharso, where there is no such temple. He next submitted that even if the petitioners are aggrieved by the order they have remedy before the Civil Court of competent jurisdiction because a disputed question of fact cannot be decided in the present writ petition under Article 226 of the Constitution of India.

9. Before parting with the final outcome, it would be worth noting that any person is not entitled to be continued as a matter of right in the temple/math as "Pujari" in absence of any document, contemplating mode of succession to that office through the founder or Shebait nominated by the founder in this regard. For proper appreciation of this issue, it would be apposite to quote relevant paragraph of judgment rendered by the learned Division bench of this Court in the case of Gauri Shankar vs. Ambika Dutt & Ors., since reported in AIR 1954 Patna 196.

"7. Before doing so it is necessary to indicate the legal principles which provide

the setting for the issues to be investigated in the present case. It is important to state that a pujari or archak is not a shebait. A pujari is appointed by the Shebait as the purohit to conduct the worship. But that does not transfer the rights and obligations of the shebait to the purohit. He is not entitled, to be continued as a matter of right in his office as pujari. He is merely a servant appointed by the Shebait for the performance of ceremonies. Where the appointment of a purohit has been at the will of the founder the mere fact that the appointees have performed the worship for several generations, will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priest — 'Maharaneer Inderjit Kuer v. Chundemun Missir', 16 WR 99 (Cal) (A); — 'Kali Krishna v. Makham Lal', AIR 1923 Cal 160 (B), and — 'Ananda Chandra v. Broja Lal', AIR 1923 Cal 142 (C). If, therefore, there is no proof in this case that Bakshi Bhagwat Lal had appointed Aditnath Misssr as Mutwalli but he was appointed merely as Pujari the plaintiff will not be entitled to get a decree."

10. In view of the aforesaid facts, circumstances and the position obtaining in law, this Court does not find any error in the order impugned dated 08.03.2021, apart from the fact that there is no statutory right in favour of the petitioners to continue as pujari in absence of any valid document. However, it has rightly been submitted on behalf of the learned counsel representing the Board that if the petitioners have any grievance with regard to the order, the remedy is available before the Civil Court of competent jurisdiction to get their right adjudicated after leading evidences in support of their claim.

11. In view thereof, the present writ petition stands dismissed having no merit.