

(2023) 07 PAT CK 0071

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction No. 383 Of 2023

Mahant Chandrma Das

APPELLANT

Vs

Haribansh Rai

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 141, 227
Bihar Hindu Religious Trust Act, 1950 — Section 32, 32(3), 32(4), 43, 55
Bihar Waqfs Act, 1947 — Section 31, 31(3)
Code of Civil Procedure, 1908 — Section 115

Citation : (2023) 07 PAT CK 0071

Hon'ble Judges : Sunil Dutta Mishra, J

Bench : Single Bench

Advocate : Kamal Nayan Chobhey, Siddharth Harsh, S.K. Mandal, Arjun Mandal, Ganpati Trivedi, Mohit Kumar

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties.
2. This Civil Miscellaneous Application has been filed under Article 227 of the constitution of India against part of the order dated 24th March, 2023 passed by learned Additional District Judge IVth, Buxar in Miscellaneous Case No. 108/2022 whereby and whereunder the learned court below directed inter alia, that the rent etc. of the trust property be deposited in bank account of the trust till the constitution of Managing Committee by Board in accordance with law and its notification in compliance of order of High Court, Patna and also directed that one Kedarnath Singh and other illegal occupant over portion of the trust property be vacated forthwith.
3. As per the petition, the petitioner is a duly appointed Mahanth of Shri Badi Mathiya, Ram Rekha Ghat, Buxar which is under the main Math of Shri Hanuman Garhi Mandir, Dibrugarh, Assam. Badi Mathiya is duly constituted Religious Trust with the Bihar State Board of Religious Trust (hereinafter be referred as 'the

Board'). It is under Mutwaliship / Mahanthi and no Managing Committee can be constituted for looking after the affairs of the Trust. The present Mahanth Chandrama Das (petitioner) is the Chela of Mahanth Ramlakhan Das who vide a registered deed dated 16.03.1989 had appointed him to be the new Mahanth of Shri Hanuman Garhi Mandir, Dibrugarh, Assam and Shri Badi Mathiya, Ramrekha Ghat, Buxar. Accordingly, after death of Mahanth Ramlakhan Das, the petitioner took over the charge of Mahanti of the trust in question.

4. The further claim of the petitioner is that when the petitioner took charge of the Math, several illegal occupants were occupying the immovable property of the Math against whom action was taken up at the instance of the petitioner. They were creating hurdles in day to day business of the Math and trying to take over the affairs of the Math anyhow and in this regard they are making frivolous allegations against the petitioner to the Board. A public interest litigation bearing CWJC No. 13432 of 2021 was filed by one Pushpa Devi which was disposed of vide order dated 03.08.2021 directing her to approach the Board. Subsequently she again filed CWJC No. 19607 of 2021 in which this Court directed the Board to take a decision on her complaint within a period of three months.

5. The Board vide order dated 22.03.2022 held that said Pushpa Devi is no way interested in the welfare of the trust and there is no genuine complaint against the petitioner. However, the Board suggested formation of a committee to aid and advice the petitioner. One Jay Prakash Singh filed a PIL bearing CWJC No. 7303 of 2022 and Division Bench of this Court vide order dated 24.06.2022 directed that management Committee to be constituted within 60 days as directed by the Chairman / President of the Board in his order dated 22.03.2022. Satish Kumar, employee of the Board submitted the inspection report on 11.08.2022 to the Board with respect to irregularity against the trust. The Board issued order dated 17.08.2022 constituting a committee and directed Kedarnath Singh to vacate the premises followed by a notification dated 13.09.2022 constituting a six member committee. The petitioner is not included in the committee and has been made custodian. The petitioner challenged the order dated 17.08.2022 and notification dated 13.09.2022 & 22.03.2022 before this Court by CWJC No. 15039 of 2022 which is pending.

6. One Haribansh Rai, Respondent No. 1, a paid staff of the Trust also challenged the order of Trust by filing Miscellaneous Case No. 108/2022 in which the impugned order has been passed.

7. Learned senior counsel for the petitioner has submitted that petitioner is not impleaded as a party before the Court below nor any notice was issued to him or Kedarnath Singh but aggrieved by the impugned order which is directly affecting the petitioner. The issue of the rent of shops over plot No. 1055 under Khata No. 488 and residential area over plot No. 1063 under Khata No. 488 are exclusive property of the petitioner which was not the subject matter of Miscellaneous Case but while hearing the injunction petition the learned Court below has passed the impugned order dated 24.03.2023 directing the rent of the shop to be

deposited in bank account in Para No. 16 (B) of the order and direction to vacate the premises of the Math which is actual a property of the Mahant / petitioner which is illegal and liable to set aside by this Court.

8. On the other hand, learned senior counsel for respondents has submitted that the learned Additional District Judge has passed the impugned order in exercise of its power under Section 32 (3) of the Bihar Hindu Religious Trust Act (hereinafter referred to as 'the Act') and by virtue of Section 32 (4) of the Act the same is final against which an appeal shall lie and this Miscellaneous Application is not maintainable. He further submits that there is no illegality in the impugned order and this Civil Miscellaneous Application is liable to be dismissed.

9. The provisions of Section 31 of Bihar Waqfs Act 1947 and Section 32 of Bihar Hindu Religious Trusts Act are similar. This Court in *Abi Saghir Vs. Bibi Asia Bang* AIR 1954 Pat 463 held that the District Judge acting under Section 31 (3) of Bihar Waqfs Act is not a persona designata but a 'Court' subordinate to High Court within the meaning of Section 115 of CPC. In *Sheo Shankar Choubey and Ors. Vs. The Bihar Hindu Religious Trust Board* (AIR 1968 Pat 510) this Court held that the authority under Section 43 of the Act is a Court and thus amenable to the Revisional Jurisdiction of this Court under Section 115 of the Code.

10. Section 32 (3) of the Act, inter alia, confers power to the District Judge for varying, modifying or setting aside the scheme submitted to it and subject to the result of such application, the order of the Board under Sub Section 1 and 2 shall be final. Section 32 (4) of the Act provides that any order passed by the District Judge or any application made under Sub-section 3 shall be final. Section 55 of the Act reads as follows:-

"55 Orders of District Judge to be appealable to the High Court:-

(1) Unless otherwise provided in this Act, an appeal shall lie to the High Court against every order passed by the District Judge under this Act.

(2) No appeal shall lie from any order passed in appeal under this Section."

11. This Court in *Sarv Mangal Devi Vs. Bihar State Board of Religious* 2007 (2) PLJR 469 in paragraph 13 held as under:

"13. From a plain reading of the aforesaid provision, it is evident that against every order passed by the District Judge, which would obviously include an order passed by him under Section 32 (3) of the Act, an appeal shall lie unless otherwise provided in the Act. The use of the expression "unless otherwise provided" in the context would mean that beside the remedy under Section 55 any other remedy is provided under the scheme of the Act. Nothing has been pointed out to show that any other remedy is provided under the Act, against the order of the District Judge. In the face of it, I am of the opinion that an appeal would lie against the order passed by the District Judge.

12. Learned counsel for the petitioner submits that the aforesaid decision in Sarv Mangal Devi Trust (Supra) that an appeal would lie against the order passed under Section 32 (3) by District Judge and not the revision is per incurium as the same has been passed in ignorance of the previous Judgments stated above and contended that the said judgment be ignored as it does not lay down the correct position in Law.

13. In State of U.P. Vs. Synthetics and Chemical Ltd. (1991) 4 SCC 139 the Hon'ble Supreme Court observed that 'Incuria' literally means 'carelessness' In practice per incuriam appears to mean per ignoratium. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline.

14. In Sheo Shankar Choubey and Ors. Vs. The Hindu Religious Trust Board AIR 1968 Pat 510 the main issue before this Court was as to whether the authority under Section 43 of the Bihar Hindu Religious Trusts Act is a 'Court' and thus amenable to the revisional jurisdiction of this Court under Section 115 C.P.C. and this Court held that "if the District Judge exercises powers under Section 32 of the Act as a Court subordinate to this Court within the meaning of Section 115 of the C.P.C., there is no reason to hold that the authority appointed under Section 43 of the Act is not a Court subordinate to this Court within the meaning of Section 115 C.P.C. In that case it was not held that when there is provision of appeal against the order passed by the Court the revision petition under Section 115 C.P.C. is applicable. This question was neither raised nor adjudicated in that case.

15. It is not in dispute that District Judge acting under Section 32 of the Act is a Court and is subordinate to this Court. However, in view of Section 55 of the Act an appeal shall lie because the order is final and accordingly, I sustain the objection raised by the learned counsel for the respondents. Accordingly this Civil Miscellaneous Application is not maintainable and on this ground it is dismissed as not maintainable.

16. However, in view of the facts and circumstances of this case, liberty is given to the petitioner to file Miscellaneous Appeal, if so advised, in accordance with Law.

17. This Civil Miscellaneous Application is, accordingly disposed of with aforesaid observation.