

(1998) 05 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 6081 of 1994

Mahanth Ram Shankar Das, Chela of late Balram Das,
deceased Mahanth of Raipur, P.S. Ujiarpur, district Samastipur

APPELLANT

Vs

Bihar State Religious Trusts Board, Vidyapati Marg, P.S.
Kotwali, District Patna and Others

RESPONDENT

Date of Decision : 15-05-1998

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28(2)(h), 33, 43

Citation : (1998) 3 PLJR 218

Hon'ble Judges : Chy. S.N. Mishra, J

Bench : Single Bench

Advocate : Tara Kant Jha, Sanjay Prasad and Amit Prakash, for the Appellant; R.C. Thakur (for the Board), M/s. Jagdish Pandey, Sanjay Kumar Thakur, Ashutosh Ranjan Pandey and Mrs. Anshuman (for private Resp. No. 3), for the Respondent

Final Decision : Allowed

Judgement

Chy. S.N. Mishra, J.—In this writ application, the petitioner has prayed for quashing of the order, dated 21.5.1994 passed by the respondent Chairman, Bihar State Religious Trusts Board, Patna, whereby respondent no. 3 has been declared as temporary trustee of the Trust, namely, Raipur Math. A copy of the order passed by the respondent Chairman of the Board is made Annexure-13 of this writ application. Earlier, by order, dated 13.1.93, the respondent Administrator of the Board, appointed the Subdivisional Officer, Dalsingsarai, as temporary trustee of the Math, in question, as it appears from the order contained in Annexure-5 to this writ application. Mr. Tara Kant Jha, learned senior counsel appearing on behalf of the petitioner has assailed the order of the respondent President of the Board on the ground, firstly, that the Trust, in question, is purely a private Trust and, as such, the respondent President has no jurisdiction and/or authority to interfere with the day-to-day functioning of the Trust including appointment of the temporary Trustee unless and until the nature

of the Trust is decided either by the authority appointed u/s 43 of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as "the Act") and/or a competent civil court. In substance, the provisions of the Act apply to only public trust and not the private one. Secondly, the petitioner, being a Chela of the original Mahanth Balram Das, having already been appointed Trustee with respect to the Math in question, according to the customs, the provision of Section 33 of the Act cannot be resorted to by the respondent President for appointment of the temporary Trustee unless the petitioner is removed from the post of Trustee in terms of Section 28(2) (h) of the Act. Lastly, it is submitted that the documents were filed before the respondent President in order to show that he being the Chela of late Balram Das, has been duly appointed Mahanth, but without considering those documents, the impugned order has been passed, which is wholly illegal, arbitrary and without jurisdiction. The respondent Board though did not file any counter-affidavit in this case, yet the learned counsel appearing on behalf of the Board supported the order of the respondent President and submits that the Trust, in question, is a public Trust and, as such, the President of the Board is competent enough to appoint the temporary Trustee. The private respondent, namely, Ramadhar Das, has, however, filed a counter affidavit in this case and submits that the petitioner is not the Chela of late Mahanth Balram Das, as alleged, and hence, he cannot be appointed the Trustee of the Math, in question. The private respondent, namely, Ramadhar Das, claiming himself to be the Chela of one Narayan Das, has been rightly appointed a temporary Trustee by the respondent President of the Board. In order to appreciate the rival contentions of the parties, some relevant facts according to the pleadings first. The petitioner was the adopted Chela by the then Mahanth Balram Das of the Math after following the religious ceremony. The said Balram Das was subsequently assassinated on 28.12.1992 and, accordingly, a criminal case was lodged being Vidyapati Nagar P.S. Case No. 110 of 1992 for various offences punishable u/s 302 and other Sections of the Indian Penal Code including section 27 of the Arms Act, against unknown. The petitioner was also injured in course of the assassination of Mahanth Balram Das. The dead body of the late Mahanth Balram Das was handed over to the petitioner for performing the last rites. On 8.1.1993, on the day of Dwadsha of late Mahanth Balram Das, Pagari ceremony was also held whereby the heir and successor of said deceased Mahanth Balram Das was decided. After the death of the deed. Mahanth Balram Das, the Subdivisional Officer, Dalsingsarai, had deputed a Magistrate in order to maintain the law and order situation in the Math premises and in presence of a large number of people including the Mahanths of different Asthals, Pagari was given to the petitioner. The said Pagari ceremony was presided over by Mahanth Ramanand Das, the Magistrate, who was deputed to maintain the law and order situation submitted a report to the Subdivisional Officer, Dalsingsarai, stating therein that the petitioner was given Pagari in presence of several saints and general public. A copy of the report is made Annexure-3 to this writ application. The learned Magistrate has also issued a certificate on 9.1.93 to the effect that on the day of Dwadsha ceremony i.e. 8.1.93 of the said deceased Mahanth

Balram Das, the petitioner was made the Mahanth of the Math, in question, in presence of Naga community of Ayodhyaji, Mandaladhish saints and other public. A copy of the said certificate, dated 9.1.93 is made Annexure-4 to this writ application. The petitioner, after having been appointed the Mahanth of the Math, in question, started performing the day-to-day functioning of the Math but suddenly on 13.1.93, the respondent Administrator of the Board appointed the Sub-divisional Officer, Dalsingsarai, as a temporary Trustee in exercise of the power u/s 33 of the Act. A copy of the order, dated 13.1.93 is made Annexure-5 to this writ application. The petitioner filed a petition before the Sub-divisional Officer challenging his appointment as a temporary Trustee. The Sub-divisional Officer immediately thereafter sent a letter to the respondent Board stating therein that the petitioner was legally declared Mahanth on 8.1.93. Relying upon the certificate issued by the Magistrate- in-charge, the Subdivisional Officer wrote a letter to the Board to the effect that the appointment of the Subdivisional Officer as a temporary Trustee is not permissible in the eye of law unless the petitioner is removed in terms of Section 28(2) (h) of the Act, which is apparent from the letter, dated 5.1.94 issued to the Board, a copy of which is Annexure-6 to this writ application. The Circle Officer has also reported to the Additional Collector by his letter, dated 24.5.94 (Annexure-10) to the effect that the petitioner has been appointed Mahanth according to the customs in presence of respectable Sadhus and Sants including general public on 8.1.93 and since then the petitioner is performing his duty to the satisfaction of all.

2. In order to set the matter at rest, both the Additional Collector as well as the Collector, Samastipur, submitted a joint report, dated 23.1.94/2.2.94 to the Board wherein it has been specifically stated that the petitioner has succeeded the deceased Mahanth Balram Das on 8.1.93 in a duly constituted religious ceremony in presence of several respectable Sadhus, Sants and general public and since then, the petitioner is looking after the properties of the Math property. The said Joint report of the Additional Collector and the Collector, Samastipur, is made Annexure-11 to this writ application. The private respondent, namely, Ramadhar Das, claiming himself to be the Gurubhai of the late Mahanth Balram Das and a Chela of late Mahanth Narayan Das, has supported the Impugned order passed by the respondent President of the Board. It is alleged that the order impugned is an appealable order, the writ Court cannot interfere with the same. It is further alleged that the petitioner has a criminal background and is trying to grab the property of the Math and hence, the President of the Board has rightly passed the impugned order appointing him as a temporary Trustee. According to him, the Math is a public Trust since the Math, in question, has already been registered with the Board. It is further alleged that late Mahanth Narayan Das had two disciples; one late Mahanth Balram Das and another, Ramadhar Das, the private respondent no. 3, and on the death of Mahanth Narayan Das in 1987 late Balram Das succeeded him and after his death, the private respondent, namely, Ramadhar Das became the Trustee of the Math, in question. In support of his contention, he has relied upon the sale deed executed

by late Mahanth Narayan Das in favour of Sheo Narayan Singh and the certificate issued by the Mukhiya of the local Gram Panchayat, which are Annexures-"A" and "B", respectively, to the counter-affidavit filed on his behalf in this case. It is further stated in his supplementary counter-affidavit that the petitioner is involved in the murder of late Mahanth Balram Das.

3. Now coming to the first submission of the learned counsel for the petitioner to the effect that the Math, in question, is a private Trust, and, as such, the provisions of the Act are not attracted in the facts and circumstances of this case, in my view this is a mixed question of fact and law and, in order to decide the nature of the Trust, both oral and documentary evidence will have to be adduced by the parties before a positive finding is arrived at on such a question of fact. It is obvious, therefore, that in a proceeding under Articles 226 and 227 of the Constitution of India, this basic jurisdictional fact cannot be decided, by this Court. However, the Board, before invoking the various provisions of the Act, has initially to decide *prima facie* as to whether the Math is a Private Trust or a Public Trust, but such a decision of the Board is always subject to the final decision of the competent civil court. Accordingly, the first submission of Mr. Jha cannot be accepted.

4. As regards the second submission of Mr. Jha to the effect that the petitioner being a Chela of late Mahanth Balram Das having already been appointed the Trustee, the President of the Board has no authority in law to resort to the provisions of Section 33 of the Act in order to appoint the temporary Trustee. The submission of Mr. Jha is well founded, which will be apparent from the facts stated above, inasmuch as, right from the Anchaladhikari up to the Collector of the district have accepted the fact that the petitioner has been appointed Trustee after the assassination of late Mahanth Balram Das. The details of the order, certificate and the letters issued by the various authorities have already been referred to above and the same do not require to be reiterated here. It is settled principle of law that unless the Trustee is removed in accordance with the provisions of Section 28(2) (h) of the Act or there is a vacancy on the post of Trustee in that case alone, recourse to Section 33 of the Act has to (sic?cannot?) be resorted to by the respondent Board. In order to answer this question, Section 33 of the Act has to be noticed, which reads as follows?

33. 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 trusts 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 the peace or serious interference with the management of the property of such trust or where there is vacancy caused by the order of the Board passed under clause (h) of Sub-section (2) of Section 28 of the 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 condition as it thinks fit.

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

Admittedly, the petitioner has neither been removed in terms of Section 23(2) (h) of the Act nor there has been a vacancy on the post of Mahanth. Therefore, the respondent President cannot take recourse to Section 33 of the Act for the purpose of appointing the temporary trustee. From a mere perusal of the impugned order as well as the pleadings of the parties, it is apparent that no averment has been made and/or the reasons assigned as to the existence of the condition precedent for invoking the jurisdiction u/s 33 of the Act. In this connection, reference may also be made to Section 28(2) (h) of the Act?

28. General Powers and duties of the Board.?(1)?

xx xx xx

(2) Without prejudice to the generality of the provisions of Sub-section (1), and subject to the other provisions of the Act, the powers and duties of the Board shall be?

(a)

to xx xx xx

(g)

(h) to remove a trustee from the office if such trustee?

(i) is convicted of any such offence or Is subjected by a Criminal Court to any such order as implies moral turpitude which in the opinion of the Board, unfits him to hold office.

(ii) is convicted more than once of the same or different offences under this Act.

(iii) refuses to act, or wilfully disobeys the directions and orders of the Board under this Act; or

(iv) applies for being adjudged an insolvent;

Having regard to the aforesaid provision, the respondent Board can remove a trustee if such trustee is convicted or refuses to act or wilfully disobeys the direction of the respondent authority. Even assuming for a moment that the trust is a public trust, the petitioner has not been removed by the respondent Board in exercise of its power under the provisions aforesaid. It goes without saying that the respondent authority can exercise its power u/s 33 of the Act only after removing a trustee in accordance with law. The respondent President, while passing the impugned order, has not assigned any reason whatsoever as to how the private respondent is being appointed a temporary trustee in terms of Section 33 of the Act. Reference, in this connection, may be made to the decision in the case of Ishwari Prasad Jhunjhunwala vs. The Bihar State Religious Trusts Board, Patna (A.I.R. 1989 Patna 349). The allegation, according to the private

respondent that the petitioner having a criminal antecedent and trying to grab the trust property is wholly misconceived, as the petitioner is neither named in the first information report nor the chargesheet has been submitted against him nor he has been convicted in any offence, so as to call for any interference in this regard by the authority. Even if the contention of respondent no. 3 be accepted as it is claimed he is the Gurubhai of late Mahanth Balram Das, the rightful claim of the petitioner cannot be defeated having regard to the fact that he is a Chela of late Mahanth Balram Das and according to the recital in the deed of dedication and the affidavit by late Mahanth Narayan Das, as contained in Annexures 23 and 12, respectively, the petitioner has a preferential claim over the private respondent. The submission of the learned counsel for the private respondent to the effect that since the file has already been opened with regard to the Math, in question, in the office of the respondent Board, the respondent authority is well within its jurisdiction to pass the impugned order without resorting to the provisions of Section 28(2) (h) of the Act, is wholly misconceived and rejected as such. Even if the trustee submitted to the dictates of the respondent authority, his conduct does not amount to waiver of his rights much-less his legal rights. Accordingly, I am of the view that even if the trust, in question, has been registered with the Board, it cannot be said definitely that the Math, in question, is public trust and the respondent President is at liberty to pass the impugned order without resorting to the provisions of Section 28(2) (h) of the Act.

5. The last submission of Mr. Jha is equally well founded in as much as, it appears that various documents were filed before the respondent Board in support of his contention that the petitioner has been appointed mahanth after following the prescribed ceremony in presence of several Sadhus, Sants and general public, which has been endorsed by not only the Anchaladhikari and the Sub-divisional Officer but also by the Additional Collector and the Collector of the district. It, however, transpires from the order impugned that the private respondent was earlier appointed as a trustee of the Math, in question, but there is nothing on the record to show as to how and when he was removed from the post of trustee. If the private respondent has been earlier appointed a trustee of the Math in question, there is nothing on the record to suggest as to how and when and under what provisions of the Act, he has been subsequently removed from the post of the trustee. As has been referred to above, the Subdivisional Officer of Dalsingsarai was appointed Special Officer after the death of Late Mahanth Balram Das. Obviously, therefore, the private respondent was never appointed on the post of trustee at any point of time by the authority either before or after the death of late Mahanth Balram Das. In that view of the matter, it can safely be held that the private respondent was never appointed a trustee of the Math in question and the contrary finding arrived at by respondent President is perverse and cannot be accepted. For the reasons, stated above, the order dated 21.5.94 passed by the respondent Chairman of the Board, a copy of which is made Annexure 13 to this writ application is hereby quashed and consequently, this writ application is allowed, but without costs. Before I part

with this case, however, I may observe that if the situation so warrants, the respondent authority will be at liberty to appoint the trustee in accordance with law without being prejudiced by the order of this Court.