

(2005) 07 PAT CK 0011
In the Patna High Court
Case No : CWJC No. 5906 of 2000

Methodist Church and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Citation : (2005) 3 PLJR 663

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Ram Balak Mahto and Sanjay Kumar, for the Appellant; Amar Nath Singh and Anil Kumar Singh, for the Respondent

Judgement

Barin Ghosh, J.—From the certified copy of the Cadestral Municipal Survey of 1923 it appears that by using the expression "Kaisrehind" the then Government of India was shown as the owner of the land in question. It was shown that on a part of the subject land there exists a Church building and the adjacent land had been shown as a stable, gardens and road. Some part of that land had been shown as vacant land. There appears to be no dispute that the Church authority, who was authorised to look after the Church at that point of time, was in possession of the land in its entirety. The Government of Bihar as late as in 1979 admitted the same in writing by filing a written statement in Title Suit No. 139/1979 which was instituted by some local people seeking a declaration that the vacant land is a playground. It is claimed that the statement so made in the written statement was sought to be withdrawn later by filing a supplementary written statement, but the fact remains that at least as on the date of filing of that written statement, the view of the Government of Bihar was that the Church authority was in possession of the entire land. Be that as it may, the Government of Bihar at no point of time had any ownership of the land in question and has not yet been able to produce a single scrap of paper showing that the then Government of India or the present Union of India ever permitted the Government of Bihar to step into the land in question or to remain in possession

thereof.

2. The Second Schedule to the Indian Church Act, 1927 shows that the Church known as "The Holy Saviour" at Arrah vests in the Crown i.e. the then Government of India and is one of the Indian Churches. There is no dispute that the Church known as the Holy Saviour situate at Arrah is the Church which is in occupation of the land in question. Section 3 of that Act provided that notwithstanding any defects or informalities in the documents or proceedings, it is declared that where any Church has been consecrated before the commencement of that Act with the approval or at the request of a competent civil authority and the site thereof was at the date of the sentence of consecration and has ever since remained vested in the Crown i.e. the then Government of India, such consecration shall be deemed to have conferred upon the Indian Church and upon its officials and members respectively, such rights of possession, control, and user of the site and buildings as they respectively would have had if prior to the pronouncing of the sentence of consecration the site and buildings had been conveyed or assured to a person or persons to hold the same on behalf of or in trust for the Indian Church, and that the Indian Church and the officials and members thereof respectively shall have and be entitled to exercise, after the date of severance, all such rights of possession, control and user of the site and buildings of any consecrated Church as the Indian Church and the officials and members thereof respectively had immediately prior to that date, and all references to the United Church of England and Ireland, and the Church of England or the Church of England in India, whether such terms are used with or without the addition of the words "as by law established", in any petition for or sentence of consecration or in any conveyance or declaration of dedication of the site of any such Church shall be construed as references to the Indian Church.

3. The Act, therefore, specifically provided that on the date of severance the Indian Church that hitherto belonged to the Crown or the then Government of India will vest in the said Church and the Committee authorised to monitor the same. The Government of India by a notification dated 23rd March, 1938 severed the said Church from the Church of England and accordingly issued an appropriate Notification in the Official Gazette and by reason of such severance with effect from the said date, the land and the buildings of the said Church then belonging to the Government of India stood vested in the said Church. It became the full owner of the said landed property and the Government of India by a mandate of the statute severed itself as the owner of the land and buildings in question. As such, the Government of India while issuing the said Notification of severance made it explicit that in relation to the Church with which we are concerned, there was no necessity for obtaining separate conveyance to transfer the ownership of the land in question in favour of the said Church from the Government of India. It became, thus, necessary to record alteration of the ownership in the records of rights. The petitioner, therefore, approached for that purpose and the Assistant Survey Superintendent passed an order directing recording of the petitioner-Church as the owner of the land in question. The

State of Bihar, who has not even a wind of right in respect of the land in question, preferred an appeal and surprisingly the Collector in his capacity as Superintendent of Survey in order to please his master, the State of Bihar, without appreciating the law and facts relating to the case, reversed the order of the Assistant Survey Superintendent without any just reason at all. It is unthinkable that a high authority as that of the Collector directed the Church officials to go and file a suit to establish their title which title has been bestowed upon them by a statutory mandate. It is surprising that the Collector despite having had noted the fact that the land, at one point of time, stood registered in the name of the Government of India did not insist upon the Government of Bihar to produce even a scrap of paper to show that it had received consent of the then Government of India or the present Union of India to step into the land in question. It is surprising that he has directed that the land be registered in the name of the Government of Bihar in the records of rights. In such view of the matter, the writ petition is allowed and the unwarranted order brought on record by the Collector in his capacity as the Superintendent of Survey is quashed restoring the order of the Assistant Survey Superintendent. The writ petition is accordingly disposed of.