

(1997) 01 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 328 of 1997

Prem Lata Gupta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28(2), 33
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1997) 1 BLJR 646 : (1997) 1 PLJR 480

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner claims to be the lawful owner of a piece of land measuring 3 kathas in area being part of C.S. plot No. 248 of Khata No. 2 situated at Sadikpur Yogi, Bahadurpur within Patrakarnagar police station in the town of Patna (hereinafter referred to as the "the disputed land"). According to the petitioner, he has constructed a residential building and come shops over the land; one of the shops is given on rent to the Medicana Chemist and Druggist. In this writ petition, the petitioner challenges a notice dated 4.1.1997 (annexure 6) issued by the Circle Officer, Sadar, Patna to his tenant Medicana Chemist and Druggist. In the notice, it is stated that as directed in letter No. 21 R, dated 4.1.1997 issued by the Addl. Collector, Patna the possession of the land of Radha Swami Satsang Samaj was taken over on 4.1.1997. The notice further accused the addressee of having made some unauthorized construction on the land and running a shop there. It finally directed the addressee to vacate the shop premises by 8.1.1997 failing which he would be evicted from the shop "following a procedure recognised by law."

2. According to the petitioner, the action of the Circle Officer in issuing this notice to his tenant was wholly arbitrary and unreasonable; it was further submitted that the respondent authorities intended to evict the petitioner and his tenant

from the disputed premises by use of force without instituting any suit or legal proceedings in that regard. The petitioner's apprehension regarding his forcible eviction from the disputed premises is not denied by the respondents in the counter-affidavit filed on their behalf.

3. According to the petitioner's case, plot No. 248 of Khata No. 2 originally belonged to one Awdhesh Pd. Singh whose name was recorded in the Khatiyan and other relevant revenue records. After the death of Awdhesh Pd. Singh, his three sons, namely Bageshwar Pd. Singh @ Jangli Babu, Nageshwar Pd. Singh and Bhagwat Pd. Singh @ Bachchu Babu succeeded him and came in actual physical possession of the land. The petitioner's further case is that 5 kathas of land of plot No. 248 was purchased by Radha Swami Satsang Sabha (a society registered under the Societies Registration Act, 1860) from the three sons of Awdhesh Pd. Singh under a registered sale deed dated 25.2.1956. The Sabha had purchased the land with the intention of constructing a Meeting Hall there but later it got a much larger and more suitable site and therefore gave up the idea of constructing a Hall on plot No. 248. It had however, constructed a building over two kathas of plot No. 248 which it gifted to the State Government for running a school under the name of Radha Swami Upper Primary School it is further stated on behalf of the petitioner that there was some dispute relating to the boundary between the two kathas gifted by the Satsang to the State Government and the remaining land of plot No. 248. In order to resolve the dispute the Sabha filed Demarcation Case No. 13, 1976-79 before the L.R. D.C. Patna. The L.R.D.C. on the basis of physical verification, demarcated the two pieces of land by his order dated 16.7.1979 following which the Sabha constructed a pucca boundary wall around the remaining " kathas of land of plot No. 248 providing an Iron Gate for entrance on the eastern side of the land. The petitioner's case is further that as the Sabha had no use for this piece of land (3 kathas of plot No. 248, i.e. the disputed land), a. id therefore it sold it to the petitioner by a registered sale deed dated 19.3.1990 for a consideration of Rs. 1, 80, 000. The petitioner came in possession over the disputed land and on the basis of a plan submitted to the P.R.D.A. constructed a double storeyed house for residential purpose; in addition, he also constructed 15 shops one of which was let out to the aforesaid Medicana Chemist and Druggist, according to the petitioner, the house was duly assessed for municipal taxes by the Patna Municipal Corporation and was registered in the Corporation's records as Holding No. 783A. Further, according to the petitioner the disputed land or the house constructed there was never used for any private or public religious purpose and it was not part of any trust property. The impugned notice was issued to his tenant without affording an opportunity of hearing to the petitioner.

4. The Bihar State Board of Religious Trust (respondent No. 5) and the officials of the district administration have filed separate counter affidavits. However, the contents of the two counter affidavits are quite similar. According to the respondents, the land of C. 5 Plot No. 248 of Khata No. 2, Tauzi No. 227 was recorded as the Bakasht land of Awdesh Pd. Singh, It is the case of the

respondents that Awdesch Pd. Singh on Jeth 25 of the Hindi year, 1340 gifted 21 decimals of C.S. plot No. 248 to "Brahma Asthan" following which a trust into possession of the land in question. Later, one Rampati Das and Phakkar Das filed rent fixation case No. 108/61-62 in respect of the land of C.S. Plot No. 248 and by an order passed by the S.D.O. in that case the rent of the land was fixed in the name of Phakkar Das. It is further stated in the counter affidavit and Bhagwat Pd. Singh one of the sons of Awdesch Pd. Singh had raised objection to the Fixation of fair rent of C.S. Plot No. 248 in the name of Brahma Asthan through Phakkar Das but there was a compromise between Bhagwat Pd. Singh and Phakkar Das and eventually fair rent was fixed in the name of Brahma Asthan. It is further stated that Brahma Asthan was a pious place where the deity of Brahma Baba was installed and it was a place of worship for all the people of the vicinity and the neighbouring villages. All the people of the neighbouring Mohallas and village and the right to worship on the disputed land and were, in fact, freely worshiping the deity of Brahma Baba established and installed on the disputed land. As regards the sale of the disputed land by the Satsang Sabha to the petitioner, it was stated in the counter-affidavit that the sale deed was collusive, fraudulent, illegal and invalid and the petitioner had purchased the land from satsang Sabha when the title of the Sabha itself had not been conclusively determined. In this regard, it was further stated that Radha Swami Satsang Sabha had filed T.S, . No. 5/1986 in the Court of Munsif III, Patna, which was till pending in the Court of the Execution Munsif and the title of the petitioner's vendor the Satsang Sabha) was still under challenge and in dispute. In the counter affidavit, it was also stated that T.S. No. 56/1995 was filed in the Court of Munsif III Patna, against the petitioner by some people, namely, Kishori Prasad Singh and other claiming the right of worship over the disputed land. In this suit, the Court by an order, dated 14.9.1995, passed under the provisions of Order XXXIX, Rules 1 and 2. of the Code of Civil Procedure, had confirmed the earlier order to maintain status quo over the land and restrained the petitioner "from constructing wall or erection any type of construction over the suit land." In this suit neither the Religious Trust Board nor the State of Bihar was a party. It was stated on behalf of the petitioner that a Misc. appeal had been filed against the order of injunction passed by the trial Court.

5. The object of having discussed above the rival claims of the petitioner and the respondents in respect of the disputed land in some detail is simply to show that there is considerable dispute regarding the nature of the land as also its title. According to the petitioner, the disputed land is not part of any trust property and no worship was ever held on it. He claims it to be his personal property which he purchased under a registered sale deed from Satsang Sabha. On the other hand, the actions of the respondents is founded on their claim that the disputed land belonged to a religious trust.

6. It is to be examined now how the Religious Trust Board acted in this background of disputed claims. From the materials brought on record, it appears that on 21.12.1996 the Chairman of the Board issued a letter to the petitioner (copy

at annexure 4) asking him to submit before him a copy of the sale deed by which he had purchased the disputed land by 27.12.1996. In response to this letter, the petitioner duly submitted a copy of the sale deed along with a covering letter, dated 28.12, 1996 (annexure 5). It further appears that on 21.12.1996 the Chairman of the Board also asked the Anchal Adhikari, Sadar, Patna to hold an enquiry in respect of the disputed plot. The enquiry report dated 23.12.1996 is at annexure "B" to the counter-affidavit filed on behalf of the Board. From the report, it is apparent that the enquiry was held ex parte and without giving any notice to the petitioner or any other concerned person. It further appears that even assuming that the disputed land was used as Brahma Asthan, no trust concerning it was registered with the Bihar Religious Trust Board.

7. Apparently on the basis of this report the Chairman on 30.12.1996, issued a letter to the District Magistrate, Patna, intimating him that in exercise of power u/s 33 of the Act, he was appointed temporary trustee of "Sri Radha Swami Satsang Samaj Trust" situated at Mauza Sadikpur Yogi, Patna and a request was made to make arrangements for a comprehensive management of the trust at his level. On 14.1.1997, a corrigendum was issued correcting the name of the trust and declaring that the trust should be known as "Brahma Asthan Sadhikpur Yogi Trust" instead of Radha Swami Satsang Samaj Trust. The District Magistrate gave directions for taking possession of the disputed land following which the Addl. Collector, Patna, by his letter dated 4.1.1997 asked the Circle Officer, Sadar Patna to take necessary steps in that regard. The Circle Officer as directed by the letter of the Addl. Collector issued the impugned notice.

8. At this stage, it would be apposite to take note of some provisions of the Bihar Hindu Religious Trusts Act, 1950 Section 28 (2) which deals with the powers and duties of the Board provides that the Board would prepare and maintain a complete record containing full information relating to the origin, nature, extent, income (if any), objects and beneficiaries of the different classes of religious trusts in the State of Bihar and to further prepare and maintain a register containing two copies of all documents creating any religious trust. Section 34 of the Act requires the Board to prepare and maintain a register of religious trusts in the State. Section 43 deals with declaring immovable properties of religious trust as trust property and the relevant portion of Section 43 is as follows;

43. Decision of disputes as to whether any immovable property is a trust property-(1) All disputes as to whether any immovable property is or is not a trust property shall be inquired into, either on its motion or on application, by the authority appointed in this behalf by the State Government by notification in the Official Gazette:

Provided that such authority shall be a person who is, or has been, a member of the Bihar Civil Service (Executive or judicial Branch or a member of the Bihar Superior Judicial Service or the Indian Administrative Service.

(2) Such authority shall cause-

(a) a general notice to be published in the prescribed manner calling upon all persons having any claim to such property to file their claim within sixty days from the publication of the general notice and

(b) notices to be served on the Board and on the persons stated in the application or known to such authority to be in possession of the property.

(3) Such authority shall after taking into consideration the claims, if any, filed under Sub-section (2) and after hearing the parties and taking such evidence as may be adduced before him; declare whether the property is a trust property and, if it is so, the trust to which it belongs and shall make an order accordingly.

9. It is seen above that the trust to which according to the respondents' claim the disputed property belongs is not registered with the Board (See Annexure "B" to the counter-affidavit of the Board). It is also quite clear that the Board was quite unsure even of the name of the trust and was trying to give it a suitable name; in the Chairman's letter dated 30.12.1996, it was described as Sri Radha Swami Satsang Samaj Trust. Later, a corrigendum was issued on 14.1.1997 changing its name to Brahma Asthan Sadikpur Yogi Trust; in the impugned notice and in the letter of the Addl. Collector to the Circle Officer, it was still described as the land of Radha Swami Satsang Samaj.

10. It is also noted above that there was serious dispute between the parties regarding not only the nature of the property but also its title.

11. In these circumstances and having regard to the facts of the case, it appears wholly arbitrary and high handed on the part of the Religious Trust Board to simply assume that the disputed property was trust property belonging to some religious trust. If there were sufficient reasons for the Board to believe that the disputed land was trust property and the petitioner was laying false claim over it, the proper course would have been to get a proceeding u/s 43 of the Act initiated in which the dispute could be decided after giving the notices to the petitioner and other concerned persons in accordance with law. In leaning over the district administration to achieve its desired object, the Board clearly tried to take a short cut, by passing any judicial proceeding, disregarding the claims of individual private rights and overlooking statutory provisions which adequately provided for dealing with such a situation. The course of action adopted by the Board, therefore, cannot be approved in law and calls for an interference by this Court. It is accordingly directed that the respondents shall not try to evict the petitioner from the disputed land by means of any forcible or coercive method but only by taking recourse to a procedure known to law. It will be open to the Board to get a proceeding u/s 43 of the Act initiated in respect of the disputed land or to take such other action as may be sanctioned by law. It may further be clarified that no observations made in this order may be construed as expressing any opinion on the merits of the parties' claim regarding the disputed land.

12. In the result, this application is allowed with the aforesaid observations and direction,