

(1990) 12 PAT CK 0006

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1134 of 1988

Ram Gopal Das and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 302

Citation : (1992) 1 BLJR 421

Hon'ble Judges : S. Ali Ahmad, J;R.N. Prasad, J

Bench : Division Bench

Judgement

S. Ali Ahmad, J.—The two petitioners were members of the Managing Committee of Mahabir Asthan Mandir, which is, perhaps, the most popular in the city of Patna. By an office order No. 3702, dated 20-10-1987 issued by respondent No. 2, Bihar Rajya Hindu Religious Trust Board, the Managing Committee of the Mandir was dissolved and a new Committee was constituted to look after the affairs of Mahabir Asthan. A copy of the order has been appended as Annexure-1 which was sought to be quashed when the writ application was filed. During the pendency of this application, a supplementary affidavit was filed on behalf of the respondents annexing Notification dated 16-3-1990 issued by respondent No. 2, the Board, stating the fact that a trust committee has been formed by it by reconstituting Shri Mahabir Asthan Trust Committee. The Committee so formed consisted of 11 persons. In these circumstances, the petitioners filed an application with a prayer to quash the Notification dated 16-3-1990 reconstituting the Managing Committee of Shri Mahabir Asthan Trust Committee (Annexure-9) also. Further a prayer was made to implead the new members of the Committee as party-respondents to the writ application. The prayer was allowed by this Court on 16-8-1990.

2. According to the petitioners there were 11 members of Shri Mahabir Mandir Trust Committee, including the two petitioners. Notices were issued to all the 11

members of the Trust Committee asking them as to why the dues amounting to Rs. 5,921.74 paise was not deposited in the Office of the Bihar Religious Trust Board. The members were, therefore, asked to show cause by 20th July, 1987 as to why another committee be not constituted after dissolving the present committee for better management of the Trust. A copy of this notification has been marked as Annexure-2. Annexure-3 is the reply dated 20-7-1987 sent by the Managing Committee of the Mandir to respondent No. 2 stating therein that Rs. 3484.80 paise has already been deposited with the Boarder, vide Receipt No. 2461, dated 27-6-1987. It was also said that this amount was paid as fee on the basis of the audit report and that it was prepared to pay any further amount if found due on the basis of any other audit report. In the circumstance a request was made to inform the committee of any outstanding dues so that the same could be deposited. The show cause also made a request to grant one month's time to file another show cause with regard to the reconstitution of a fresh Managing Committee after dissolving the existing one for better management, of the Trust. The grievance of the petitioners is that without considering the reply of the Managing Committee as contained in Annexure-3, respondent No. 2 constituted a new committee as contained in Annexure-1 after dissolving the existing committee. It is also said by the petitioners that sometime back the dispute with regard to the constitution of the Managing Committee was considered by this Court in Misc. Appeal No. 428 of 1956. That appeal was disposed of on the basis of a compromise petition filed by the parties to the appeal. According to that compromise, it is said that the Board had agreed not to interfere with the management of the temple and its properties by the Committee.

3. A counter-affidavit has been filed on behalf of respondent No. 2, tire Board, which, inter alia, states that the erstwhile Managing Committee was dissolved and a new committee was constituted for better management of the temple and its properties. Further it was said that show cause notice contained two parts ; in the first Part, the members were asked to show-cause for nonpayment of fee to the Board while in the second part they were asked to show cause as to why the erstwhile committee should not be dissolved for proper and better management, of the Trust. The fact that a reply was sent by the members of the erstwhile committee on 20-7-1987 was accepted but it is said that the reply was confined to the non-submission of fee. With regard to the notice regarding constitution of new committee after dissolving the existing one, a request for a month's time was made to give reply to this part of the notice. But more than a month passed and no show cause with respect to that part of the notice was given and ultimately the Board passed the order as contained in Annexure-1 after considering all aspects of the matter. The fact that under the compromise entered into in Misc. Appeal, the Board had agreed not to interfere with the management of the temple and its properties are accepted but it is said that it does not mean that the Board will not be entitled from exercising its statutory obligation of interference when it feels that the Committee is contravening with

any provision of the Trust Act. It is said that in the Misc. Appeal itself while approving the compromise, the court observed "the power of the Board to make alteration in the constitution of the committee from time to time cannot be doubted for a moment". It was further stated that under the compromise order it was said that "if and when any vacancy takes place, the remaining members of the committee will select another suitable man to fill up the vacancy with the approval of the Board." It was said that these two petitioners were taken as members of the Committee after the compromise in the Misc. Appeal but their selection as members of the Committee was never approved by the Board, Therefore, it is said that the petitioners were not lawfully selected members of the Committee and, as such, they could not maintain this application. It was also said that under clause-"C of the compromise petition, it was said "the said committee will prepare a sound scheme of the management of the said temple and its properties and send the scheme to the Board for approval". According to the counter-affidavit, no scheme was ever prepared for three decades in spite of several reminders. Allegations of mismanagement were also made in the counter-affidavit. It was said that in the year 1978-79, the total income of the Trust was shown to be Rs. 29,815 and the fee chargeable by the Board was only Rs. 1304.45 paise. The same fee was charged for the year 1979-80 to 1983-84. In the year 1984-85, the income was shown as Rs. 30,140 and in the year 1985-86, it was shown at Rs 59,690. It is said that the new committee took over charge of the Trust and its properties on 2-11-1987. The income from offerings to the deities jumped to Rs. 10,15,295 between 2-11-1987 to 2-11-1988. Further it was said that under Annexure-9, an elaborate and ambitious scheme like running of hospital, school and other charitable institutions has been framed. About petitioner No. 1, it was stated that he is an accused in a case u/s 302 of the Indian Penal Code and that a raid was conducted by the Income Tax Department in the temple and about Rs. 5,80,000 besides documents and other valuable assets were recovered. It is also stated that in that raid illegal arms were also recovered from the premises of the temple.

4. A reply, to the counter-affidavit has been filed on behalf of the petitioners in which, inter alia, it has been stated that respondent No. 4, Shri Kishore Kunal, has managed everything against the petitioners. It is said that at the relevant time he was the Senior Superintendent of Police of Patna and on account of personal grudge and animosity, petitioner No. 1 was made an accused in criminal case. It is also said that at his instance the income tax authorities conducted the raid. With regard to the recovery of about five lacs rupees it is said that the amount did not belong to the temple and petitioner No. 1 had collected it for construction of a gold Ram Singhasan. The increase in the Income of temple is not disputed but it is said that after the construction of the new building the temple had gained greater popularity and, as such, the offerings increased. It was also said that the schemes regarding medical facilities, library, education, etc. were on paper and were also beyond the scope of the trust.

5. Mr. Ghose appearing in support of the application contended that Annexure-1

(followed by Annexure-9) was passed on the ground that the erstwhile Managing Committee was dissolved on the ground that it was not maintaining correct accounts and was also guilty of misusing the trust properties ; besides improper utilization of the trust income. Mr. Ghose contended that for not maintaining correct accounts the Board had no jurisdiction to dissolve trust committee. According to him, in case the Board was satisfied that the accounts were not properly maintained then action could be taken u/s 67 of the Bihar Hindu Religious Trust Act (for short the Act). He also contended that misuse of trust properties or improper utilisation of the trust income were not the grounds on which show-cause notice (Annexure-2) was issued. It is said that although on these two grounds, the Committee could be dissolved but in this case since no opportunity was given to the petitioners to show that the allegations of misuse of trust of properties or improper utilization of trust income were not correct. He, therefore, urged that the action taken on these two grounds were violative of the principle of natural justice and, as such, should be quashed. Mr. Advocate-General and Mr. Lai Narain Sinha, who appeared on behalf of the respondents contended that for not maintaining correct accounts action can certainly be taken u/s 67 of the Act but that does not mean that this cannot be a ground for dissolving the Committee. They seem to be right. u/s 67 of the Act, person guilty of not maintaining accounts correctly can be punished but he can also certainly be removed by the Board in proper cases. So far as this case is concerned, in my opinion, this could not be a valid ground because in the show-cause notice (Annexure-2), the Board had asked the members of the Committee regarding non-deposit of Rs. 5,621.74 paise. By Annexure-3, a reply was sent stating that only Rs. 3,484.80 paise was payable according to the audit report and that this amount had already been paid to the Board under Receipt No. 2461, dated 27-6-1967. Neither in Annexure-1 nor in the longish counter-affidavit it has been said that the statement made in Annexure-3 regarding payment of Rs. 3,484,80 paise is incorrect or that any further amount was due on the basis of this audit report. With respect to the other two grounds regarding misuse of trust properties and improper utilization of the trust income Mr. Advocate-General and Mr. Lal Narain Sinha urged that Annexure-2, the notice consisted of two parts; the first part was regarding non-payment of the fee to the Board and the second part was with regard to be better management of the Mandir. It is said that the expression "better management" is wide enough to cover misuse of trust properties and improper utilisation of trust income. They also urged that the petitioners also understood the notice in that light and that is why in Annexure-3 the members of the erstwhile committee requested for a month's time to file a supplementary show cause explaining the position regarding better management. I do not agree. No doubt, by the concluding line of Annexure-2, the members of the erstwhile committer were asked to show cause by 20th July, 1987 as to why for better management a new committee should not be formed. But this has to be read in the light of what has been said earlier. If we look to that, we find that the grievance or the complaint is confined only to non-payment of the fee payable by the Trust Committees to the Board. It is true that the

members in their reply (Annexure-3) had asked for a month's time to file a supplementary show cause regarding better management, but that in my opinion was only mechanical without understanding as to what was meant by better management. It is important to mention here that in fact no show cause was filed with regard to better management even after one month and in fact no effective show cause could have been filed on the basis of such a vague statement. I am, therefore, of the opinion that Annexure-1 suffers from the evil of non-compliance of natural justice.

6. Normally after the conclusion I have arrived at, the only course left was to quash Annexure-1 and consequently Annexure-9. But Mr. Advocate- General and Mr. Lal Narain Sinha have urged that the writ application itself is not maintainable at the instance of only two of the members of the erstwhile Committee without impleading the remaining members as respondents. They have also urged that Annexures-1 and 9 were schemes prepared u/s 32 of the Act and the course open to the person aggrieved by the same was to file an application under Sub-section (3) of Section 32 of the Act before the District Judge. Since that was not done, therefore, this Court should not interfere in the exercise of powers under Article 226 of the Constitution of India. Lastly Mr. Advocate-General and Mr. Lal Narain Sinha submitted that the power under Article 226 of the Constitution is discretionary and in this case this Court should not exercise that power in the larger interest of the Trust. I now propose to deal these aspects.

7. Mr. Lal Narain Sinha strongly urged that the writ application on behalf of only two of the nine members of the Committee is not maintainable. He says that if the application was to be allowed the consequence would be restoration of the Committee which had been removed but the other seven members neither filed any application for their restoration on the committee nor these two petitioners impleaded them as party-respondents. He, therefore, urged that incase the application is allowed then this Court will be forcing upon them a duty in which they may not now be interested. This position was opposed with equal vehemence by Mr. Ghose. He first urged that it was not proper for the respondents to take up the plea of non-joinder of necessary party at this stage. He said that earlier the respondents in their counter- affidavit has said that the parsons, who were appointed as members of the committee under Annexure-9 were not made parties. When this objection was raised they were impleaded as respondents. He says that similar objection have been raised by the petitioners in their counter-affidavit regarding non- inclusion of other seven members. He further says that had such objection been raised the petitioners would have added them also as parties. I do not think, the stand taken by Mr. Ghose has any substance. It was not necessary for the respondents to state in the counter-affidavit that the petitioners should implead the other seven persons also as respondents. They can certainly now urge that the application is not maintainable on account of non-joinder of necessary party. The moot question, therefore, now is to see as to whether non-inclusion of the other seven members of the erstwhile committee rendered this writ application as not maintainable. Mr.

Ghose says that they are not necessary parties and in that connection has referred to the decision in the case of Pal Singh Vs. Sunder Singh (Dead) by Lrs. and Others, and a Full Bench decision in the case of Sharfuddin and Anr. v. Bibi Khatija and Anr. 1987 PLJR 978. Pal Singh's case (supra) does not help Mr. Ghose at all, rather it may go against him. The Supreme Court had occasion to consider as to whether a suit for eviction of a tenant by a co-owner only was maintainable with respect to tenanted premises which subsequently was allotted to his share without impleading the other co-sharers as parties. The learned Judges held that in these circumstances the action for eviction could be maintainable even in the absence of other owners. No doubt, the case reported in 1987 PLJR 978 has held that a co-sharer can maintain a suit for eviction. But in my opinion, the principle of co-sharer cannot be applied in a case of co-trustee. In case of a co-sharer every sharer has a defined share in the property. Therefore, one co-sharer can maintain a suit against trespasser or even against a tenant particularly when the relief granted will be beneficial to the other co-sharers. But the joint trustees have no right as such in the property. They have to act jointly for the benefit of the trust and may be held liable in case of breach of trust or negligence on their part. Further, one of the trustees may also be held liable for the breach of trust or negligence of the other trustees. The view I have taken on this aspect of the matter fully gets support from the decisions in case of Mohammad Hasan v. Nazar Mohammad and Ors. AIR 1916 Pat 44 and in the case of Virasaminayudu v. Aruna Chella Chetti ILR Mad 200. For these reasons, I am of the view that the present application at the instance of the two co-trustees is not maintainable.

8. u/s 32(1) of the Act, the Board either of its own motion or on an application made to it in this behalf by two or more persons interested in any trust may settle a scheme after such enquiry as it thinks fit giving notice to the trustees of the Trust in question and to such other persons as may appear to the Board to be interested therein. It may also after giving due notice modify any scheme or substitute the existing scheme by another scheme. This power, however, is controlled by the Proviso to this sub-section which says that the Scheme so settled or modified or substituted shall be in accordance with the law governing the trust and shall not be contrary to the wishes of the founder so far as such wishes can be ascertained. Sub-section (2) of Section 32 of the Act prescribes that the scheme so settled, modified or substituted shall unless otherwise ordered by the District Judge on an application made under Sub-section (3) comes into force, on a day to be appointed by the Board in this behalf and shall be published in the official Gazette. Sub-section (3) of this section provides that the trustee or any other person interested in the trust may within three months from the date of the publication in the official Gazette of the scheme so settled, modified, or substituted may make an application to the District Judge for modifying or setting aside the scheme. The order passed under this sub-section is final which can be challenged in this Court by an application u/s 115 of the Code of Civil Procedure. Mr. Advocate-General in the background of what I have

said above urged that the petitioners could have filed an application u/s 32(3) of the Act before the District Judge, who was competent to vary, modify or set aside the schemes, namely, Annexures 1 and 9. He says that this Court in exercise of extraordinary writ jurisdiction should not interfere when the petitioners did not avail of the remedy provided in the Act itself. Mr. Ghose did not dispute that he could approach the District Judge u/s 32(3) of the Act for setting aside the schemes (Annexures 1 and 9) but he stated that this Court admitted the application on 22-7-1985 and it will be very harsh on the petitioners if the application is dismissed on the ground that the internal remedy as provided under the Act has not been exhausted. In support of his contention learned Counsel referred to the decisions in the cases of Bawa Gopal Das Bedi and Sons and Others Vs. Union of India (UOI) and Others, , Shri Madhav Mills Pvt. Ltd. v. Collector of Central Excise and Ors. 1983 PLJR 142, Punsraj Begawani and Anr. v. The State of Bihar and Anr. 1987 PLJR 1150 and Md. Ataur Rahman v. State of Bihar and Ors. 1989 PLJR 711 (FB). Mr. Advocate-General, on the other hand, relied on the decision in the case of Dinesh Prasad Mandal v. The State of Bihar and Ors. 1985 PLJR 1002 (FB). A perusal of all these cases shows that normally a person seeking relief under Articles 226 and 227 of the Constitution should exhaust the remedy provided under the Act but in case he comes to this Court by passing the internal remedy and the application is admitted then it is not proper to dismiss the application only on the ground that the petitioners have not availed of the remedy under the Act. But no case has been brought to our notice which says that once the application has been admitted the same must be decided on merit even if the alternative remedy has not been availed of. It all depends on the facts of each case. Here I find that the erstwhile committee was dissolved on the ground that it was not maintaining correct account and was misusing the trust property and also on the ground that the trust income was not being properly utilized. In the counter-affidavit filed by the respondents it has come that the income of the trust immediately after dissolution of the erstwhile committee rose from Rs. 59, 690 per year to Rs. 10,15,295, a fact, which has not been disputed by the petitioners. Further, it has come on record that about five lacs rupees were recovered from the temple premises when a raid was conducted by the Income Tax Authorities. The recovery is not disputed but it is said that the money belonged to petitioner No. 1 which he had collected for construction of Ram Singhasan made of gold. It is not possible for me to find out the correctness of the versions. It was also suggested that the scheme is only on paper and what is stated in the counter-affidavit about providing medical aid to the poor and about feeding the poor, etc. is not correct. These aspects also cannot be decided in the writ application by us. Further learned Counsel for the petitioners urged that some of the provisions in the schemes go beyond the scope of the trust and this should also be the basis for quashing Annexures 1 and 9. Here again, I feel my inability in deciding these facts. The controversies just mentioned above are only illustrative and not exhaustive. The proper course, in my opinion, for the petitioners was to file an application Sub-section (3) of Section 32 of the Act before the District Judge, who would have decided these

controversies after taking evidence adduced by the parties on the point. The District Judge could thereafter either vary, modify or set aside Annexure 1 or Annexure 9. Any one aggrieved by the order of the District Judge could have approached this Court u/s 115 of the CPC and then this Court could have decided the matter. As it is, I feel absolutely unable to decide the factual dispute between the parties. For this reason also, I feel that no interference in this application is called for by this Court.

9. I have purposely made no comment with regard to the allegation that medical aid to the poor, feeding the poor, etc. is not being carried out in the manner stated in the counter-affidavit or that some of the provisions in the schemes are contrary to the scope of the trust for which it was created because the petitioners or any two persons interested in the trust in the trust may file an application for modifying varying or substituting the scheme (Annexure 9). The Board, I am sure, if an application is made will look into the matter and will pass an appropriate order. I should, however, not be misunderstood to mean that I am suggesting modification, variation or substitution of the scheme in case an application u/s 32(1) of the Act is filed. I have mentioned this only with a view to indicate that the scheme (Annexure 9) is not sacrosanct for all times to come and it can be modified, varied or substituted by another scheme in accordance with law if situation so warrants.

10. For these reasons, I do not find any merit in this application which is dismissed, but on the facts of this case, I am not making any order as to costs.