

(1991) 05 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5020 of 1984

Ram Janki Ji and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-05-1991

Acts Referred:

Citation : (1991) 05 PAT CK 0015

Final Decision : Dismissed

Judgement

U.P. Singh, J.—In a land ceiling case initiated against the deities, petitioners 1 and 2 herein, the Deputy Collector, Land Reforms, allowed two units of land to the deities and declared 5 acres of land as excess. The collector however, held that the deities were entitled to only one unit. Accordingly, he ordered for publication u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter called "the Act"). On revision, the Member, Board of Revenue, dismissed the revision application on the ground of limitation as well. The orders of the Collector and the Member, Board of Revenue, are Annexure 3 and 4, respectively, which have been challenged in this writ application.

2. One Mahanth Sukhram Das had executed two registered deeds of dedication in December, 1950, dedicating the landed properties to the deities Ram Janki Ji (petitioner No. 1) and Raja Rani (petitioner No. 2). They were separately given the landed properties to the extent of 81.14 acres of land and were put in possession over the same through their shebait. A true copy each of Samarpannamas has been annexed marked Annexures 1 and 1 / A to this application. After the death of the said Mahanth Sukhram Das, petitioner No. 3 became the Shebait of both the deities. A land ceiling proceeding has started in the year 1976-77. The properties of the Math are registered with the Religious Trust Board and the same are under the control and guidance of the said Board. On local inspection by the authorities of the State Government, it was found that there are two temples one of Ram Janki Ji and another of Raja Rani. The two

temples are situated on an area of 2.81 acres of land on the basis of the enquiry report, the Deputy Collector, Land Reforms by his order dated the 18th November, 1976, allowed two units to the deities on the ground that there are two temples to whom the lands were gifted by means of two separate registered deeds of Samarpannamas.

3. The learned Collector while hearing the case u/s 29 of the Act, held that, after receipt of the notice under Rule 9 of the Rules framed under the Act the Secretary of the Committee constituted by the Board of Religious Trust, namely, Shri Ramashray Pd. Singh appeared before him on 25-4-1977 and prayed for time. Thereafter he remained absent and did not produce any paper in the court on the date fixed, i.e. on 16-8-1977. In view of the continuous absence, the case was adjourned for ex parte order. The learned Collector held that mere existence of two temples cannot be a ground for allowing two separate units under the Act. The entire properties donated to the two deities are being managed by a committee formed under the direction of the Religious Trust Board. Even before the formation of the committee, the entire property was being managed by one man. There is no evidence on the record to show that the properties donated to the deities are to be managed separately having separate accounts. The learned Collector, therefore, did not find any reason to recommend for exemption u/s 5 of the Act held that the Trust is entitled to one unit only. The Additional Collector was, accordingly, requested to take action u/s 10(2) of the Act.

4. u/s 32 of the Act, a revision petition was preferred before the Member, Board of Revenue. A question of maintainability of the said application was raised on the ground that it was hopelessly time barred and the Board of Revenue first dealt with the question whether the parties had been given notice by the lower courts, whether the parties received notices; and whether they had the knowledge of the order of the Collector and, if so, when the petitioners got the knowledge of the final order of the Collector dated the 23rd December, 1978. The admitted position is that the revision petition was filed on the 5th October, 1983, without any application for condonation of delay. Subsequently, on the 4th January, 1984, a petition for condonation of delay was filed u/s 5 of the Limitation Act. Thus, the revision petition was filed after a lapse of four years nine months after the order of the Collector was passed and the condonation petition was filed after two months twenty eight days after the filing of the revision petition before the Member, Board of Revenue, on the 5th October, 1983.

5. It was contended on behalf of the petitioners that no notice was given either to the deities or to petitioner No. 3 and they had no opportunity to appear. The revisional Court examined the record of the Court of the learned Collector and found that, according to the order dated the 18th April, 1977, notice were served on the Mahanth of the Math. In the order dated the 25th April, 1977, it is also mentioned that the Secretary of the Trust and prayed for time on several dates and from 16-8-1977 to 23-12-1978 they absented. The learned Collector then recorded in his order dated the 23rd December, 1978, that, after receipt of notice

under Rule 9 of the Rules framed under the Act the Secretary appeared on the 25th April, 1977, and prayed for time but, thereafter he remained absent and did not produce any paper before the Court since 16-8-1977. In view of the continuous absence of the Secretary, the case was adjourned for ex parte order. In these circumstances, the Courts below held that the petitioners failed to give any reason denying receipt of the notices on their behalf. It could not be said that notices were not received by the parties or on their behalf or that they were ignorant of the notices. Therefore, the petitioners were well aware about the case and they were given opportunities.

6. The other contention that the petitioners were not aware of the judgment of the learned Collector till the 14th September, 1983 was equally found untenable and is contradicted by the certified copy of the Collector's order filed by them. It was found as a matter of fact that, if the petitioners were in dark about the order of the learned Collector dated 23rd December, 1978, till the 14th September, 1983, then how they could apply for a copy of that order on the 27th February, 1979. Therefore, it is obvious that the parties were in knowledge of the order of the Collector at least on or before the 27th February, 1979, when they had applied for the certified copy. Further, the assertion of knowledge is also corroborated by the fact that the Secretary of the Trust had appeared on the 25th April, 1977, the date when the order was passed by the Collector, as also after the said date until the 27th February, 1979. In these circumstances, it was held that the petitioners failed to discharge their onus satisfactorily as to why they remained silent and took no steps to press their case from the 15th August, 1977, to the 23rd December, 1978, and even thereafter, no steps were taken till the 26th February, 1979. The contention that they were not in knowledge of the decision of the Collector till the 14th September 1983, is found to be controverted by their own documents. On a careful consideration of these facts, the Member, Board of Revenue, held that the revision petition was hopelessly time barred and no sufficient cause was shown for condoning the delay.

7. Sufficiency of cause is a condition precedent for the exercise of discretionary jurisdiction. Here the facts disclose gross negligence and inexcusable carelessness and want of bona fides. Therefore, the writ jurisdiction cannot be exercised.

8. The next question is as to whom the dedication was made. In Annexure 1 or 1/A, the word "Raja" "Rani" is not mentioned there. The deed by itself cannot create any endowment or trust. The Law requires something more, what is required in a deed of dedication has been dealt with by Shri S. V. Gupte in his Book "Hindu Law", 3rd Edition, Vol. I at page 708. In accordance with Article 27. An endowment for a religious or charitable purpose would be valid, if inter alia, it is made for a purpose recognised by Hindu Law as religious or charitable and if it is made in the manner provided by Hindu Law and if the subject and the object of the endowment are certain. As to how an endowment is made has been dealt with in Article 30 and it provides that an endowment for a religious or a

charitable purpose may be made by mere dedication. Appropriation of property for specific religious or charitable purpose with an intention of making an endowment constitutes a valid dedication. Article 31 of the Hindu Law by "Gupte" provides that an endowment, the subject or the object of which is not certain, is invalid. Here in the present case, there is no evidence to show that the purpose of the deed was to serve "Raja-Rani". Unless that be shown, the exemption cannot be granted u/s 29 of the Bihar Land Reforms (Fixation of Ceiling Arms and Acquisition of Surplus Land) Act 1961. In the present case, the requirement of Section 29 of the said Act is not fulfilled. Thus, the contention of the petitioner claiming exemption u/s 29 of the said Act must fail.

9. In the case of Yogendra Nath Naskar Vs. Commissioner of Income Tax, Calcutta, , the Supreme Court held that the Hindu deity is a legal person. A Hindu idol has the juridical status with a power of suing and being sued. According to Mayne's Hindu Law, 12th Edition at page 1132, under the Hindu Law, image of a deity of the Hindu pantheon is a justice entity. The image of the deity is to be found in Shastras. "Raja-Rani" is not known to Shastras. It is unknown in Hindu Pantheon. It is a particular image which is a juristic person. Idol is again an image of the deity. There cannot be a dedication to any Name or image not recognised by the "Shastras". Here, in the present case, the petitioners assert that the dedication is to both the deities "Raja Rani" but none of these have been recognised by the "Shastras".

10. In the counter affidavit, the respondents Parcha-holders have contended that there is no existence of two separate temples and both the deities are installed in only one room, Petitioner No. 2 (Raja-Rani) are not the deities under the Hindu Pantheon and, thus, they are not entitled to any unit under the said Act. They were not donated any land under the deed of dedication (Annexure 1 and 1/A) and petitioner No. 3 never became the shebait of the second petitioner.

11. The petitioners contended that Raja Rani are the deities under the Hindu Pantheon. The Upanishada are the highest sacred books of the Hindus. It was submitted that in Kaushitaki; Brahamans Upanishad, IInd Chapter "Sloka 1" as translated in Hindi by Pt. Srirara Sharma Acharya, in the book styled as "108 Upanishads", the following has been said :

(Vernacular omitted)

The above translation has been seriously challenged by the respondents-Parcha-holders.

12. It may be noticed that Pt. Siriram Sharma Acharya is not an authority on the subject. The translation of Prof. E. B. Cowell, Prof. F. Maxmuller and Paul Deussan are relevant:

Prof. Cowell's translation (Chowkhasa Sanskrit Studies, Vol. LXIV page 151) reads as follows;--

"Pranais Brahma thus, said Kaushitaki. Of this, Prana identical with Brahma, the

mind is the messenger, the eye the guard, the ear the door-keeper, the speech the tire woman."

According to the Shorter Oxford English Dictionary, tire woman means "A woman who assists at a Lady's toilet: a lady's maid (Arch) also a dress maker, Costumer". The illustration in the said Dictionary uses "Queen's tire-woman". Hence, the tire woman cannot be the queen.

Prof. Maxmullar's translation (Sacred Books of the East, Vol. I, Part I, page 280) is as follows :--

"Prana (breath) is Brahma, thus says Kaushitaki. Of this, Prana, which is Brahma, the mind (Manas) is the messenger, the speech the House keeper, the eye the guard, the ear the informant."

The relevant meaning of the house keeper, according to the shorter Oxford English Dictionary, is "A women engaged in house keeping, esp. the woman in control of the female servants of a house hold. This also shows that the house keeper cannot be the Queen.

Paul Deussen's translation Sixty Upanishads of Veds, Vol. I, page 30) is as follows:--

"The Prana is the Brahma, thus spoke Kaushitaki. To the Prana as Brahma, the Manas serves as the messenger, the eye as the watchman, the ear as the announcer, the speech as the attendant or the stewardess".

This also shows that the attendant cannot be the Queen.

In view of the above, it is not possible to accept the translation of Pt. Sriram Sharma Acharya. Therefore, the submission of the petitioners that, on the authority of Pt. Sriram Sharma Acharya, the petitioner No. 2 should be accepted as the deities Raja-Rani is rejected.

12 A. The petitioners' contention that, according to the Yajurveda, Chapter XXIII "Raja" is a deity is untenable. It may be pointed out that R. T. H. Griffith has translated the White Yajurveda or Vaja Saneya Samhita, Chapter XXIII is one of the Chapters dealing with the ceremony of the Ashwamedh Yagna. The word "Raja" occurring in that chapter cannot have any connection with the deities in question. The petitioners did not refer to any other authority to show that the "Raja-Rani" are the deities under the Hindu Pantheon. So, I hold that there is no authority to support the view that "Raja Rani" are the deities under the Hindu Pantheon and, therefore, the claim of petitioner No. 2 fails on this ground alone.

13. The fake forms do not constitute a deity which is to be recognised by the Hindu Shastras. The existence of worship of the "Raja-Rani" as deities is a figment of imagination of the petitioners and their Karperdaj in question. The forms to be worshipped are not imaginary and fake forms. They are not mental constructions of any human worshiper. Rather, they are ordained by the Shastras. According to Sir John Woodroffe, a former Judge of the Calcutta High

Court and Universally acknowledged authority on Tahtra, specialised branch of Hindu religion relating to worship, only the images of such forms as ordained by the Shastras become the idols of Hindu-deities Only such idols are juristic persons fit to hold the property under the Hindu Law ("Principles of Tantra" by Sir John Woodroffe, pages 236-37).

14. For the reasons stated above, this application is dismissed but there shall be no order as to cost.