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**(1968) 04 PAT CK 0016**  
**In the Patna High Court**  
**Case No : Civil Revision No. 378 of 1967**

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|---------------------------------------|----|------------|
| Sheo Shankar Choubey and Others       | Vs | APPELLANT  |
| The Bihar Hindu Religious Trust Board |    | RESPONDENT |

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**Date of Decision :** 19-04-1968

**Acts Referred:**

Bihar Hindu Religious Trusts Act, 1950 — Section 43  
Civil Procedure Code, 1908 (CPC) — Section 115

**Citation :** AIR 1968 Patna 510 : (1969) 17 BLJR 74 : (1968) 1 PLJR 414

**Hon'ble Judges :** Shambhu Prasad Singh, J;Choudhary, J

**Bench :** Division Bench

**Advocate :** Jagdish Pandey, Sidheshwar Pandey and Damodar Pd. Singh, for the Appellant; Brajeshwar Mallick, for the Respondent

**Final Decision :** Allowed

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## Judgement

Shambhu Prasad Singh, J.—This application u/s 115 of the CPC involves an important question of law as to whether the authority u/s 43 of the Bihar Hindu Religious Trusts Act (hereafter to be referred to as the Act) is a court and thus amenable to the revisional jurisdiction of this Court u/s 115 of the Code.

2. The Bihar Hindu Religious Trust Board (hereafter to be referred to as the Board) through its President filed an application before the authority appointed u/s 43 of the Act with the following prayers :--

"It is accordingly prayed that your honour will be graciously pleased to declare that the Math situated in village Atarsan along with the properties attached to it, of which the opposite party is a trustee comes within the purview of the Bihar Hindu Religious Trusts Act. 1951.

....."

Subsequently the Board also filed a petition for amendment stating therein that schedule of the properties attached to the Math were left out in the original petition by mistake of the typist and prayed that the petition might be amended

by adding a schedule of the properties of the Math. An objection was taken before the authority by the petitioners and has also been taken before this Court that the authority had no jurisdiction to decide the nature of the trust and of the properties attached to it. After hearing the parties the authority passed an order on the 17th March, 1967 holding that it had jurisdiction to decide the case before it. The petitioners moved this Court against the said order. At first the matter came up before a learned single Judge of this Court, who referred the matter to a Division Bench.

3. Mr. Jagdish Pandey appearing for the petitioners has contended that the authority appointed u/s 43 of the Act is a Court subordinate to this Court within the meaning of Section 115 of the CPC and this Court can revise its orders. On the other hand Mr. Brajeshwar Mallick appearing for the Board has contended that the authority is merely a persona designate and not a court. The provisions of Section. 43 of the Act and of the relevant rules made Under the Act unmistakably show that the authority is a Court. Subsection (1) of Section 43 deals with the appointment of the authority and the proviso to this sub-section lays down as to who can be appointed as an authority. Rule 10 of the Bihar Hindu Religious Trusts Rules, 1952, framed under the Act also lays down that applications filed under Sub-section (1) of Section 43 shall be duly signed and verified and shall contain the details of the property concerned sufficient to identify it and that the form of such verification shall be the same as laid down in the CPC for verifying a plaint. Sub-section (2) of .Section 43 provides for notice to the public as well as to the persons interested in the matter. According to Sub-section (3) before giving its decision the authority has to take into consideration the claims filed before it, that is, the pleadings of the parties, hear them and take such evidence as is adduced before it. Sub-section (8) confers upon the authority the powers of a court under the CPC in respect of the matters enumerated in that sub-section. Sub-section (9) is important for deciding the question under consideration. It runs as follows :--

"Every order of such authority under Sub-section (3) shall be enforceable by any Civil Court having local jurisdiction in the same manner as a decree of such Court."

According to this sub-section the authority has to be treated as a Court, and its order as a decree which can be executed before a Civil Court. From all these, it is plain that the legislature and the rule-making authorities had intention to confer all the powers of a Court upon the authority appointed u/s 48 of the Act and that it is a Court.

4. In *Abi Saghir and Another Vs. Bibi Asia Bano and Others*, it was held by a Bench of this Court that the District Judge acting u/s 31(3) of the Bihar Waqfs Act is not a persona designate but a "Court" subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure. The provisions of Section 31 of the Bihar Waqfs Act. 1947 (Bihar Act 8 of 1948) and Section 32 of the Bihar Hindu Religious Trusts Act are similar. If the District Judge exercises

powers u/s 32 of the Act as a court subordinate to this Court with in the meaning of Section 115 of the Code of Civil Procedure, there is no reason to hold that the authority appointed u/s 43 of the Act is not a court sub ordinate to this Court within the meaning of Section 115 of the Code, Further, there can be no doubt that while the order of the authority appointed u/s 48 of the Act is under execution before a Civil Court, appeals and revisions can be filed before this Court against appealable and non-appealable orders passed in the execution case. It will be somewhat anomalous to hold that while this Court will have jurisdiction to revise the order passed in execution of the order of the authority, it cannot revise the order of the authority itself in appropriate cases. I am, therefore, of the opinion that in appropriate cases this Court can interfere with the orders of the authorities appointed u/s 43 of the Act is exercise of its revisional powers and the authority is a court subordinate to this Court within the meaning of Section 115 of the Code.

5. In Bihar State Religious Trust Board v. Mahanth Jaleshwar Gir (ILR 1965 Pat 23 another Bench of this Court held and observed as follows:

"In terms, if a dispute is in regard to the nature of the trust itself, Section 48 is not attracted. In my opinion, nobody can approach the authority, either the Board or the trustee or any other person, for a declaration that a particular endowment or trust or institution is not a public trust but a private one, nor can anybody file an application before the authority for a mere declaration that it is a public trust. It may well be that when a question is raised before the authority in regard to a particular immovable property that it appertains to a public trust, by way of answer to such a claim the person or the trustee may raise a dispute that even though the particular property appertains to the trust, the trust is not a public one, and, therefore, the property should be held as not appertaining to a public trust. Incidentally and indirectly, In such a case the question may arise for the determination of the authority, and, on determination of this question, the ultimate declaration which the authority would be competent to give under Subsection (3) of Section 43 will be that the property" is or is not trust property But unless the determination of the character of the trust is involved incidentally and indirectly, the authority, either within the terms of Sub-section (1) or as made expressly clear by the terms of Sub-section (3) has got. no jurisdiction to adjudicate purely in regard to the nature of the trust and to give a declaration as to whether it is a public trust or a private trust."

This decision was cited before the authority in support of the objection that it had no jurisdiction to proceed with the case before it and the authority had distinguished it by observing that it could decide the nature of the trust incidentally and indirectly. From the prayer portion the petition filed before the authority, which has been quoted above, it is clear that the Board did not want the authority to decide the nature of the Math, whether it was a private or public one, incidentally or indirectly, but it wanted a direct decision on the question. Obviously, the authority had no jurisdiction to hear that application and give a decision on it. In

the circumstances, the order of the authority that it could proceed with the hearing of the case cannot be maintained and has to be set aside.

6. Mr Brajeshwar Mallick pointed out to us that there was a decision of a competent civil court that the trust was a public trust and therefore really what the authority had to decide was about the nature of the property and not of the trust itself. The fact about the existence of a decision is not mentioned in the petition filed before the authority and there-fore notice of that fact cannot be taken at this stage. It will be open to the Board to make fresh and proper application before the authority, if it is so advised.

7. In the result, subject to aforesaid observations, the application is allowed and the order of the authority is set aside In the circumstances of the case, there will be no order as to costs.

Choudhary, J.

8. I agree.