(2015) 05 PAT CK 0125

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.7431 of 1994

Shri Ram Jankiji APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Citation : (2015) 3 BBCJ 46 : (2015) 3 BLJud 82

Hon'ble Judges : Mr. V.N. Sinha, J.

Bench : Single Bench

Advocate : Mr. Kamal Nayan Choubey, Sr. Advocate, Mr. Santosh Kumar and Mr. Yogendra Kumar Dwivedy, Advocates, for the Petitioners; Mr. Rajesh Kumar, A.C. to G.P. 10, for the State

Final Decision : Allowed

Judgement

Mr. V.N. Sinha, J.—Heard learned counsel for the petitioners, State. None appears for the intervenor respondent who claim that their possession over the lands-in-question on the basis of red cards issued to them is being cancelled by the authorities on the basis of the order dated 25.03.1990 passed in C.W.J.C. No. 9658 of 1989. Earlier after 25.03.1990 the same matter had come to this Court in C.W.J.C. No. 2780 of 1993 which was disposed of under order dated 22.06.1993 by the Division Bench, as contained in Annexure-5. Operative portion of the said order is quoted herein below:-

"It is now well settled that the deities are juristic persons. However, the question as to whether the deity installed in a temple is entitled to grant of a separate unit or not depends on fate of each case, it is also well settled that where a dedication is made in favour of a trust or a temple, the trust or the temple, as the case may be, is entitled to grant of a separate unit in respect of the number of the deities installed therein.

In order to make a valid endowment a complete dedication of the property is a must. We, however, feel that the Board of Revenue, being a final court of fact, should have construed the aforesaid deeds of endowments and pass an appropriate order. In this view of the matter, the impugned order dated 20.2.1993, as contained in annexure ''G'' is set aside and the matter is remitted to the Additional Member, Board of Revenue for passing a fresh order after taking into consideration the aforesaid decision on endowments.

This application is disposed of with the above observations."

2. In compliance of the said order the parties appeared before Additional Member, Board of Revenue who having heard them disposed of the matter under resolution dated 27.07.1994, Annexure-7, operative portion whereof is quoted herein below:-

"Perused the two deeds of endowment in question, filed by the petitioners. Deed No. 305 dated 3.4.1917 has been executed by Mostt. Jiwarakhan Kuer and deed no. 306 dated 3.4.1977 has been executed by Sri Hirdayanand Tisary. Both Mostt. Jiwarakhan Kuer and Sri Hirdayanand Tiwary have clearly stated in their respective deed that they are endowing their lands in favour of the temple. None of the deeds of endowment in question indicates that the lands have been endowed in favour of any deity. Since the endowments are in favour of temple the deities, installed therein will not be entitled to separate units as already held by the Hon''ble High Court, Patna in the case of Sri Ram Janki Jee and others v. The State of Bihar and others reported in 1994 (1) B.L.J. 649.

In the result this revisions fails and is dismissed."

3. Learned counsel for the petitioners deities has assailed the said order with reference to the averments made in the two registered endowment deeds dated 03.04.1917, as contained in Annexures 1, 2 to the application. Relevant portion of the two endowment deeds creating the endowment, consecrating the deities, indicate that under the two endowments the dedicator consecrated five deities namely Sri Ram Jankiji, Sri Lakshmanji, Sri Shivaji and Parvatiji, Sri Radhaji and Sri Krishnaji.

"feu eksfdjk pks g`n;k uUn frokjh Hklqj feueksfdjk uw us ,d efUny ekSlwes efny Jh tkudh cYyHk th ftlesa rhu dksBfj;ksa esa okds ekSts HkHkqvk vius njokts ij rkehj djk ds ,d dksBj esa ewfrZ Jh jke tkudh th oks Jh y{e.k th oks nwljs esa Jh f''koth oks ikoZrh th oks frljs esa Jh jk/kk d`".k th dk LFkkiuk fd;k gSA exj gukst eqryds mlds dksbZ tk;nkn odQ ugha fd;k gS ftlds vkenuh ls ,[kjktkr lsok jkx Hkksx vkjrh iwtk J`axkj mRlo leb;k oks ejEer efUnj oxSjg dk ges''kk vUtke ik;k djs vkSj gekrdk dksbZ ,rokj ughaA oks eqleh g`n;kuUn frokjh etdwj us dqy tk;nkn viuk eafnj etdwj esa ctfj;s fdrs odQukek nsdj ejdqea rkjh[k bejkstkg oDQ oks leiZ.k dj fn;k gSA

;wWa eueksfdj oks ekslekr thojk[ku dqWaoj ekslekr eueksfdj vius njokts ij ,d eafnj ekSlwQs eanhy Jh tkudh oYyHk th ftlesa dksBjh;k rhu rkehj djkds ,d esa ewrhZ dh jke tkudh th oks egweuth oks nwljs esa Jh f''koth oks ijoZrh th oks rhljs esa Jh jk/kk d`".k th dk LFkkiuk fd;k gSA exj gukst eqryds mlds dksbZ tk;nkn odQk ugha fd;k gS ftlds vkenuh ls ,[kjktkr lsok jkx Hkksx vkjrh iwtk Jhxkj oks mRlo leb;k oks ejEer eafnj oxSjg dk ges''kk vatke ik;k djsA vkSj g;kr dk dksbZ ,rokj ugha oks eq0 ftcjklu dqWavj evdqjk us dqy tk;nkn viuk eafnj etdqj esa ctfj;s cflds nsdj ejdqesa rkjh[k bejkstk ds oDQ leiZ.k dj fn;k gSA"

4. In the circumstances, the finding recorded by the Additional Member, Board of Revenue under resolution dated 27.07.1994, Annexure-7 that endowments are in favour of temple, not the deities, is contrary to the dedications, consecrations made in the two endowment deeds. In this connection learned counsel for the petitioners has also referred to the judgment of the Supreme Court in the case of Ram Jankijee Deities and others v. State of Bihar and others A.I.R. 1999 Supreme Court 2131 paragraphs 12, 20 and 24.

5. Counsel for the State opposed the submission made on behalf of the petitioners but could not establish that the dedications were not made in favour of the deities. In the circumstances, in the light of the dedication made by the dedicator and the law laid down by the Supreme Court I have no option but to set aside the impugned resolution dated 27.07.1994, passed by Additional Member, Board of Revenue, Annexure-7, which is quashed with direction to the authorities to grant five units to the five deities dedicated, consecrated under the two registered endowment deeds dated 03.04.1917. It goes without saying that as a necessary consequence of this order, order passed by the respondent Additional Collector, Collector prior to the passing of the impugned resolution by Additional Member, Board of Revenue dated 11.01.1989, 16.02.1992, Annexures-3, 4 is also quashed.

6. The writ petition is, accordingly, allowed.

