
(2007) 12 JH CK 0017
In the Jharkhand High Court

Smt. Pratima Ghosh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-12-2007

Acts Referred:

Trusts Act, 1882 — Section 34

Citation : (2008) 2 JCR 343

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Hear the parties finally.

2. Petitioner has prayed for quashing the order dated 16.1.2004 passed in Miscellaneous Case No. 90 of 2003 by the learned District Judge, Giridih, on the purported application u/s 34 of the Indian Trust Act (Trust Act for short) allowing respondent No. 3, Tapbrata Brahmchari, claiming himself to be the Trustee of Bharat Varshiya Brahmo Mandir Congregation, to sell the Trust property to the extent of 8 kathas of land to respondent No. 4.

Petitioner has further prayed for quashing the order dated 30.8.2005 passed in Miscellaneous Case No. 2 of 2004 by the learned District Judge, Giridih, rejecting her application under Sections 47/48 of the Bihar Hindu Religious Trust Act, 1950 (Religious Trust Act for short) as not maintainable.

3. Mr. Anil Kumar, appearing for the petitioner, submitted as follows. Petitioner is the wife of grand son of Mr. Amrit Lal Ghosh, who admittedly created the Trust in the year 1914. In the Trust Deed (Annexure-9), there was a specific declaration that "...Trustee shall not have power to sell or mortgage or otherwise encumber the herditaments and premises hereinbefore dedicated and if any Trustee or Trustees shall sell or mortgage the same or any portion thereof such sale or mortgage shall be null and void...."

Respondent No. 3, Tapbrata Brahmchari, claiming to be the Secretary of Bharat Varshiya Brahmo Mandir Congregation, a society registered under the Registration of Societies Act, West Bengal, filed a purported application u/s 34 of the Trust Act which was registered as Miscellaneous Case No. 90 of 2003 in the Court of learned District Judge, Giridih for permitting him to sell a portion of Trust property to respondent No. 4. From the said application itself it will appear that the said society was created in 1981-1982 i.e. much after creation of the said Trust. The said society wrongly claimed that the Trust-Giridih Nava Vidhan Brahmo Mandir is affiliated organization of the society which is the real beneficiaries of the Trust created by Sri Amrit Lal Ghosh. Respondent No. 3 had no locus standi to file such application u/s 34 of the Trust Act. The grounds on which the impugned order dated 16.1.2004 is passed in the Miscellaneous Case No. 90 of 2003, are beyond the scope of Section 34 of the Trust Act.

Mr. Anil Kumar, further submitted that the order dated 30.8.2005 passed in Miscellaneous Case No. 2 of 2004, is also wrong as the scope of the petition filed by the petitioner under Sections 47/48 of the Religious Trust Act, was different.

4. Mr. Debi Prasad, learned senior counsel, appearing for respondent No. 3, on the other hand, submitted that the members of Brahma Samaj are not Minors and therefore, the petitioner's application under Sections 47/48 of the Religious Trust Act was not maintainable. Regarding the application filed on behalf of respondent No. 3 u/s 34 of the Trust Act, he submitted that the same was maintainable. The property was being encroached and therefore in the interest of the Trust, the property was sought to be sold on as is where is basis to respondent No. 4. He submitted that the Court has to see the interest of the Trust while passing the order u/s 34 of the Trust Act. He lastly submitted that the learned District Judge had jurisdiction to pass order and therefore, this Court should not interfere with the impugned orders.

5. Mr. Amar Kumar Sinha, appearing for respondent No. 4, adopted the submissions of Mr. Debi Prasad. He further submitted that a new Trust has been created in 1999 of which respondent No. 3 is one of the Trustee and therefore, he could file a petition u/s 34 of the Trust Act.

6. Re : Misc. Case No. 90 of 2003 -From the facts and circumstances, noticed above, it is clear that there is serious dispute with regard to the locus standi. Petitioner's contention is that respondent No. 3 is not competent to file an application u/s 34 of the Trust Act and on the other hand respondent No. 3 is contending that petitioner cannot object. There is also a serious dispute with regard to the grounds for which the Trust property was sought to be sold by respondent No. 3 to respondent No. 4.

In my view, such serious controversies could not be decided in a summary proceeding u/s 34 of the Trust Act. The controversies between the parties, has to be decided on evidences and after hearing the concerned parties. It appears that petitioner was not before the District Judge in the said Miscellaneous Case No. 90

of 2003. In the facts and circumstances, the order dated 16.1.2004 cannot be sustained.

7. Re : Misc. Case No. 207 of 2004 -Though learned District Judge expressed prima facie doubt about the locus standi of the respondent No. 3, but in view of the said order dated 16.1.2004 passed on the application filed on behalf of respondent No. 3 u/s 34 of the Trust Act, he rejected the petitioner's application as not maintainable though giving her liberty to move this Court against the said order dated 16.1.2004. He did not go into other questions. Thus the order dated 30.8.2005 also cannot be sustained. The impugned orders cannot be upheld and accordingly they are set aside.

8. From the report called for in this case, it has come to the notice of this Court that some persons are occupying the Trust property without any authority of law. It is the duty of the State/administration to protect the property of the Trust-the lawful owner. The Deputy Commissioner is directed to see that the unauthorized occupants are removed from the Trust property.

9. With these observations and directions, this writ petition is allowed. The impugned orders are set aside. However, no order as to costs.