
(1953) 10 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 356 of 1953

Sri Mahanth Parichhan Das

APPELLANT

Vs

Hargobind Singh and Others

RESPONDENT

Date of Decision : 08-10-1953

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1954 Patna 233

Hon'ble Judges : Sinha, J; Ramaswami, J

Bench : Division Bench

Advocate : K.C. Sanyal and Baidyanath Pd. II, for the Appellant; Govt. Advocate and Rewatiraman Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the petitioner, Mahant Parichhan Das, has moved this Court for a writ, in the nature of certiorari under Article 226, of the Constitution of India for quashing the proceedings drawn by respondents 1 and 2 under the Bihar Religious Trusts Act (Bihar Act I of 1951).

2. The petitioner states that in village Dumri the father of one Gulab Singh had erect-ed a temple and after his death Gulab Singh came in possession of the temple. Gulab Singh later on became Bairagi and was known as Gulab. Das and after his death his chela Brahmdas came in possession of the properties. In survey record of rights all the properties", were recorded as belonging to Brahmdas. It is alleged that on 1st November 1918 Sant Das, successor of Brahmdas, executed a will in favour of Gena Das. Gena Das in his turn gave, all the properties to Bajrang Das by a will dated 10th of February 1926 and Bajrang Das gave all the properties to the petitioner by a will dated 21st of July 1937.

The petitioner further alleged that in the year 1944 there was a proceeding u/s 5 of the Religious Endowments Act (Act XX of 1863) & it was held by the District Judge in that proceeding "that the Asthal was not a religious, "institution of

public character and the trust was not for public purpose. The case of the petitioner is that the properties are his private properties over which he has absolute title and there is no trust, either express or constructive, with respect to these properties. The petitioner alleges in the first place that Bihar Act I of 1951 is unconstitutional as it violates the guarantees under Articles 19(1)(f), 25 and 26 of the Constitution of India. In the alternative, the submission of the petitioner is that the Act has no application to his case and the proceedings started under the Act are without jurisdiction.

3. There is an affidavit filed on behalf of the respondents in this case. It is stated in this affidavit that Dumri Asthal is a public Asthal and the properties are trust properties. It is also said that Gulab Singh of village Pokhribhinda had donated lands to the Asthal and that one Suraj Singh of Mahedeo Darbar had also donated 5 bighas of lands to Goddess Janki and that some land had also been donated, by Brahmadas and Bhekhadhari Das. In para 10 of the counter affidavit it is alleged that the people of the locality go to the temple to celebrate, "Samayas" and also subscribe towards the expenses of these Samayas. It is further alleged that the proceeding u/s 5 of the Religious Trusts Act was a collusive proceeding and judgment was obtained by the petitioned in collusion with one Baijnath Singh for the purpose of getting a declaration that, the properties were not trust properties.

4. In M. J. C. 415 of 1952 and the connected, cases we have examined the question as to the constitutional validity of Bihar Act I of 1951 and for the reasons expressed therein we have reached the conclusion, that the Act is a valid piece of legislation and did not violate any of the constitutional guarantees.

5. The alternative submission on behalf of the petitioner is that the Math is not of public character and that the properties dedicated to the Math are not trust properties. In support of his submission counsel referred in the first place to the judgment of the District Judge in Miscellaneous Case No. 36 of 1943. There is a finding in that case that the Math is not an institution of public character and there is no trust for a public purpose. The case of the respondents is that this judgment was obtained by fraud and collusion.

In para 9 of the counter affidavit it is stated that the petitioner began to neglect his duties, that he wasted the properties of the Math, abandoned the vow of celibacy and ultimately married. The people of the locality made a protest but the petitioner paid no heed and later on filed a collusive suit in the court of the District Judge in collusion with one Sri Baijnath Singh and got a declaration that the properties were not trust properties. The question whether the suit was collusive or otherwise cannot be determined without going into evidence. Counsel referred in support of his submission to the will, Exhibit B(2), dated the 21st of July 1937, executed by Mahanth Bajrang Das in favour of the petitioner. Bajrang Das recites in this document that after his death

"his chela Ramparichhan Das, by caste Bairagi, shall be and remain the

Gadinashin Mahanth and the absolute owner and do properly puja-archa, ragbhog, parab samaiya etc. of Sri Ramchandraji Maharaj, Sri Lakshmanji Maharaj and Sri Jankiji, aforesaid, as has hitherto been done, and that he shall be the absolute owner of the movable and immovable properties and enter into possession and occupation thereof and continue to appropriate the produce of the same."

But this clause of the document cannot be read in isolation but must be read in the context of the whole of the document. In a previous portion Mahanth Bajrang Das states-

"And I hope that after my death (he) shall do all the karbar relating to the said Asthal as also puja-archa, ragbhog, samaiya etc. of Sri Ramchandraji Maharaj, Sri Jankiji Maharani and Sri Lakshmanji Maharaj as has continued to be done. In the circumstances noted above it is proper for me to appoint, of my own, accord, one who should be the Gadinashin Mahanth and absolute owner of the said Asthan after my death."

The question at issue depends on various other factors : for instance, much depends on the custom and usage of the Asthal. There are other factors to be taken into consideration. It is important to enquire from what source the lands were acquired, whether the public made any contribution for the support of the Asthal, whether the petitioner or his predecessors held out the Asthal as public Asthal. In other words, the conduct of the petitioner and his predecessors would be relevant. An Asthal is! founded for the benefit of the members of a particular religious sect. The object of a Math is the propagation and practice of the doctrines of a particular religious cult. By its very definition, a Math is founded for the benefit of the public or a portion of the public. But it is not impossible to conceive of a private Math, though it must be a rare instance.

In this connection it is important to quote a passage from Mr. Justice Bijan Kumar Mukherjea's Hindu Law of Religious and Charitable Trust, page 388 :

"A debutter endowment, as has been said already, can be either private or public. Does such distinction exist in the case of, Muth? As a matter of law, there is no reason why Muths also could not be classified as public and private. A public trust is created for the benefit of the public generally or of a section thereof, which consists of an uncertain and Indiscriminate body of persons. In a private trust the beneficiaries are a defined body of persons such as members of the family and the like. The formalities for the dedication of a Muth which I have dealt with in the introductory lecture go to show that Muths may be dedicated for the use of ascetics generally. If that is the case, such Muths would be regarded as public institutions. Muths have generally Sadavarts or arrangements for feeding and giving shelter to way-fairers and ascetics attached to them. They may also have temples to which the public is allowed access. Such circumstances might indicate the public character of the endowment, but nevertheless it is not impossible to have a private Muth where the endowment is not intended to

confer benefit upon the public generally, or even upon the members of a particular religious sect or order. Examples occur where the founder may grant property, to his spiritual preceptor and his disciples in succession with a view to maintain one particular spiritual family and for perpetuation of certain rites and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and his family. In such cases, the original grantor and his descendants are the only persons interested in seeing that the institution is kept up for their benefit."

The question whether the Muth is of private character depends therefore on the construction of the grant, and the intention of the founder manifested therein, and if there is no grant, upon the custom and usage of the Muth. It is obvious that the question at issue depends on oral and documentary evidence. In our opinion a proceeding under Article 226 is not a proper machinery to investigate such a question of fact. If the petitioner contends that the property is not trust property and the Math is not a public Muth he is at liberty to institute a properly framed suit claiming the reliefs he seeks in a court of competent jurisdiction.

6. For these reasons we hold that this application for a writ under Article 226 must fail and must be dismissed with costs. Hearing fee five gold mohars.