

(1953) 10 PAT CK 0002

In the Patna High Court

Case No : M.J.C. Case No's. 154 and 188 of 1953

Sukhram Das and Another

APPELLANT

Vs

President, Bihar State Board of Religious Trust and Others

RESPONDENT

Date of Decision : 08-10-1953

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 25, 26, 27

Citation : AIR 1954 Patna 278 : (1953) 1 BLJR 658

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

Bench : Division Bench

Advocate : Janeshwar Singh, in No. 154, K.K. Sinha and Madhusudan Singh, In No. 188, for the Appellant; Govt. Advocate and M. Ravatiraman Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—These applications are made to this Court for issue of a writ in the nature of certiorari under Article 226, Constitution of India for calling up and quashing the proceedings drawn against the petitioners u/s 59, Bihar Hindu Religious Trusts Act (Bihar Act 1 of 1951).

2. In M. J. C. 154 the petitioner is Mahanth Sukhram Das of Gangaur Asthal in the district of Monghyr. His allegation in the first place is that the Bihar Act 1 of 1951 is unconstitutional as it violates the guarantees under Articles 19(1)(f), 25, 26 and 27, Constitution of India. His alternative contention is that even if the Act is constitutionally valid it has no application to the case of the petitioner for the properties are not trust properties but are personal properties of the Mahanth.

3. in M. J. C. 188 the petitioner is Mahanth Mahabir pas of Bisanpur Asthal located in mouza Mirzapur Bandoar in the district of Monghyr. The petitioner is Bairagi by caste and is follower of Badhrami sect. It is alleged that the petitioner and his predecessors had acquired properties, both zamindari and kashtkari, in their own name and there are various deeds of transfer to indicate that the

various Mahanths treated the properties as their own personal properties. In para 10 the petitioner states that according to the usage and custom of the Asthal the Mahanth is absolute owner of the properties and has full power of disposal over the same. The petitioner urges in the alternative that Bihar Act 1 of 1951 violates the constitutional guarantees and is therefore illegal.

4. In *Baijaynanda Giri and Others Vs. State of Bihar and Another*, we have examined the question whether Bihar Act 1 of 1951 violates the constitutional guarantees under Articles 19(1)(f), 25, 26 and 27 of the Constitution and for the reasons expressed in the judgment of that case we have reached the conclusion that the legislation is constitutionally valid.

5. The other question as to the character of the properties held by the petitioners cannot be satisfactorily determined in these proceedings under Article 226 of the Constitution. The question depends upon the custom and usage of the Math, upon the interpretation of the documents of title and also upon the source from which the Mahanths acquired the lands. It is further necessary to examine in each case whether the Mahanths dealt with the property as trust property or as personal property. It was pointed out on behalf of the petitioners that the respondents have not filed any counter affidavit. That is undoubtedly so, but the question as to the character of the property cannot be determined solely on the affidavits filed by the petitioners. The question depends upon investigation of facts and involves recording of evidence. It is manifest that a proceeding under Article 226 is not a proper machinery for investigating such questions of fact. If the petitioners contend that the properties are not trust properties, they are at liberty to institute properly framed suits claiming the reliefs they seek in a court of competent jurisdiction.

6. For these reasons I hold that these applications for a writ under Article 226 must be dismissed with costs. Hearing fee five gold mohars in each case.

Sinha, J.

7. I agree.