

(2014) 02 PAT CK 0057

In the Patna High Court

Case No : L.P.A. No. 1419 of 2000 in C.W.J.C. No. 9254 of 2000

Thakur Gopalji

APPELLANT

Vs

Bihar Religious Trust Board

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 PLJR 311

Hon'ble Judges : Rekha M. Doshit, C.J;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Kamal Nayan Choubey and Ranjan Kumar Dubey, Advocate for the Appellant; Shekhar Singh for the Respondent Nos. 1 and 2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rekha M. Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent is preferred by the writ petitioner against the order dated 19th September 2000 made by the learned Single Judge in C.W.J.C. No. 9254 of 2000. The matter at dispute is the management of Thakur Gopalji Maharaj Temple situated at Mirjapur (Bindwara Mor), District-Munger (hereinafter referred to as "the Temple"). The appellants claim to be managing the Temple. The President of the Bihar State Board of Religious Trusts (hereinafter referred to as "the Board"), under notice dated 2nd August, 2000 called upon the appellants to show cause why a Segal action be not taken against them for their failure to submit the accounts of the income and expenditure of the Temple from 1951-1952 till 1999-2000 and to show cause why a scheme may not be framed u/s 32 of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as "the Act") and why a committee for management be not constituted.. In absence of any reply by the appellants, under order dated 26th August, 2000 made by the President of the Board, in exercise of power conferred by Section 28(2)(h) of the Act, the appellants were removed as the trustees. Under notification issued on 26th

august, 2000, the President of the Board constituted a committee of eleven persons under the Chairmanship of the Circle Officer, Munger for management of the Temple.

2. The challenge to the said order and the notification dated 26th. August, 2000 in above C.W.J.C. No. 9254 of 2000 has been rejected by the learned Single Judge on the sole ground that the appellants have an alternative statutory remedy before the District Judge u/s 23(3) of the Act. Therefore, this Appeal.

3. Learned counsel Mr. Kamal Nayan Choubey has appeared for the appellants. He concedes that the appellants do have an alternative remedy before the District Judge. However, he has submitted that in peculiar facts of the case this Court ought to entertain the writ petition under Article 226 of the Constitution. He has submitted that the Temple is a private property of the appellants and is not a "religious trust" within the meaning of the Act. The Board, therefore, had no jurisdiction to make the impugned order or to issue the impugned notification. The impugned order and the notification thus suffer from inherent lack of jurisdiction.

4. He has further submitted that it is the Board alone which has power to take action u/s 28 of the Act. In the present case it is the President of the Board who has made the impugned order and has issued the impugned notification. Therefore also, the impugned order and the notification are vitiated by lack of jurisdiction. In the circumstances, as held in the judgment of this Court in the matter of Swamy Jai Krishnacharya Vs. Bihar State Board of Religious Trust and Others, , the learned Single Judge ought to have entertained the writ petition.

5. In the above case a similar matter came up for consideration before the Bench of this Court. The Bench of this Court considered the scope and ambit of Sections 28(2)(h), 38 and 39 of the Act. The Court did take note of power of delegation u/s 39 of the Act and held that the President may exercise power of the Board but not in absence of delegation of power u/s 39 of the Act.

6. We may note here that this petition involves the disputed questions of fact, whether or not the aforesaid Thakur Gopalji Maharaj Temple is a "religious trust" within the meaning of the Act which cannot be decided in a petition filed under Article 226 of the Constitution.

7. Section 28 of the Act provides for power and duties of the Board. Clause (h) of sub-section (2) of Section 28 of the Act empowers the Board to remove the trustee from the office if such trustee, inter alia, refuses to act or willfully disobeys the directions and orders of the Board made under the Act. Sub-section (3) thereof provides for remedy before the District Judge. Section 32 of the Act empowers the Board to settle a scheme for proper administration of a "religious trust". Sub-section (3) thereof provides for remedy against the scheme before the District Judge. Section 38 of the Act empowers the President of the Board to exercise the powers of the Board in case of necessity. Section 39 of the Act empowers the Board to delegate any of its powers and duties under the Act to

the President.

8. On perusal of the scheme of the Act it is evident that the appellants do have the statutory remedy before the District Judge against the impugned order and the notification dated 26th August, 2000. In fact, the appellants did avail of the alternative remedy. They filed Misc. Application No. 46 of 2000 before the District Judge, Munger. Simultaneously they also filed the present Appeal. Having obtained the interim relief in the present Appeal, the appellants withdrew the Misc. Application No. 46 of 2000 filed before the District Judge, Munger. Further, the President of the Board cannot be said to have acted totally without jurisdiction i.e. neither the order nor the notification is vitiated by inherent lack of jurisdiction. It will be a matter of fact to be ascertained whether the President had acted in exercise of emergency power conferred by Section 38 of the Act or did he act in exercise of power delegated u/s 39 of the Act.

9. In the backdrop of the above-mentioned facts and the legal position, the learned Single Judge has rightly rejected the writ petition on the ground of the alternative statutory remedy available to the appellants.

10. We see no merit in this Appeal. Appeal is dismissed. Interim relief is vacated.