
(2012) 03 PAT CK 0130
In the Patna High Court
Case No : CWJC No. 14751 of 2010

Tridib Nath Banerjee and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Contract Act, 1872 — Section 23
Evidence Act, 1872 — Section 116
Registration Act, 1908 — Section 17, 17(2)(VI)

Citation : (2012) 2 PLJR 478

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Sanjay Singh and Uma Kant Prasad No. 1, for the Appellant; Ganpati Trivedi and Madan Mohan for the Respondent Nos. 2 and 3, M/s Ashutosh Ranjan Pandey, Ramanuj Tiwari and Rakesh Narayan Singh for the Respondent Nos. 4, 5 and 6, Mr. Rajesh Mohan for the Respondent No. 7, Mr. R.K. Shukla for the Respondent No. 9, Mr. Kundan Bahadur Singh for the Respondent No. 10 and Mr. Suraj Samdarshi, S.G.P.C. for the Intervenor, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard learned counsel appearing on behalf of the parties. With the consent of the parties the matter has been taken up for final disposal at the stage of admission itself.

2. The petitioners are aggrieved by the order dated 4.5.2010 passed by the Presiding Officer, Bihar Hindu Religious Trust Tribunal in Case No. 3 of 2009 placed at Annexure-9 of the writ petition, whereby the preliminary objection raised on behalf of the petitioners questioning the jurisdiction of the Tribunal to entertain the application filed on behalf of the private respondent no. 4, has been disposed of while holding that the said issue would be decided alongwith other issues at the stage of final hearing of the case. The petitioners also sought to question the entire proceedings pending before the Tribunal by invoking the

supervisory jurisdiction of this Court vested under Article 227 of the Constitution of India and which was allowed by order dated 11.11.2011.

3. The facts of the matter essential for disposal of the proceeding is that the ancestors of the petitioners held certain landed properties in the district of Gaya as also a residential house at Gaya as well as at Patna. The great grandfather of the petitioners Babu Guru Das Banerjee had died leaving behind two sons, namely, Puma Chandra Banerjee and Kedamath Banerjee. Whereas Kedamath Banerjee died issueless and was survived by his wife Hemangani Devi, his brother Purna Chandra Banerjee was survived by his only son Hari Das Banerjee. Hari Das Banerjee was survived by two sons, namely, Dina Nath Banerjee, father of petitioner no. 2 and Chandra Nath Banerjee, father of petitioner no. 1. Late Kedamath Banerjee had executed a Will on 3.3.1914 (Annexure-1), which was probated in favour of late Hari Das Banerjee, the son of his brother Puma Chandra Banerjee and who was also the executor of the Will. Late Kedamath Banerjee in his Will has mentioned that he worships Shri Granth Sahib at his Guru Dwara at Dhania Pahari, Pargana Narhat, District-Gaya and also at his residence and thus wished to make certain arrangements to be given effect to after his death. While declaring himself to be the absolute proprietor of all movable and immovable properties, he bequeathed that on his death, his wife Smt. Hemangani Devi during her lifetime, shall have possession and occupation of all movable and immovable properties forming his estate, as proprietress thereof and shall annually deliver Rs. 3,600/- to his spiritual preceptor Babu Thakur Das Jee, resident of Mauja Dhania Pahari, Pargana Narhat, District-Gaya, for meeting the expenses of worship of "Granth Sahib". Certain other prescriptions had also been set out in the Will with regard to the payments to the family members and others, to be made generation to generation. The Will clearly stipulated that the grandfather of the petitioners, Babu Hari Das Banerjee would be the executor and administrator for administering his estate and looking after the village and court affairs. It was further stipulated that after the death of his wife Hemangani Devi "Shri Shri Shri Granth Sahib" at his Guru Dwara at Dhania Pahari, Pargana Narhat, District-Gaya, installed by his spiritual preceptor Babu Thakur Das Jee, shall be the absolute proprietor of all immovable properties including landed properties and houses and shall pay Rs. 2,000/- only to Babu Hari Das Banerjee, the grandfather of the petitioners and other family members mentioned in the Will. The specifications of the properties has been mentioned at the foot of the Will. The probate was challenged by the wife of late Kedarnath Banerjee up to the High Court but the challenge was negated. A petition for amendment of the probate filed at the instance of "Shri Granth Sahib" was also rejected by the 1st Additional District Judge by order dated 17.1.1968 placed at Annexure-9 to the Interlocutory Application bearing I.A. No. 5294 of 2011.

4. A Title Suit was filed by Shri Guru Granth Sahib installed in the Guru Dwara at Village-Dhania Pahari, Pargana Narhat, District-Gaya through its Shebait Mahanth Ram Lakhani Das Jee giving rise to T.S. No. 112 of 1961. The father of

the petitioners were arrayed as defendants 1 and 2. The plaintiff had prayed for declaration of title and interest in the suit properties as also for recovery of possession of the house at Patna known as "Sylvan House" situated at Mohalla-Sabji Bagh in the town and district of Patna. The suit was decreed in favour of the plaintiff and the judgment and decree is placed at Annexure-C series to the supplementary counter affidavit filed on behalf of the Board on 18.10.2011. Although the title and interest of the plaintiff over the property in suit, was upheld but insofar as the decree for recovery of possession was concerned, considering the right of residence of the defendant in the property, the trial court held the plaintiff not entitled to get the decree for recovery of possession of item no. 1 of Scheduled property i.e. the Sylvan House. It was categorically held that the plaintiff would only be entitled to possession of item no. 2 of the Schedule-1 property. It is not in dispute that the property in the Sylvan House was mentioned at item no. 1 of the Scheduled property.

5. Being aggrieved the plaintiff Guru Granth Sahib through its Shebait preferred an appeal before this Court giving rise to First Appeal No. 713 of 1979. During the pendency of the appeal the original shebait Mahanth Ram Lakhani Das expired and was substituted by Mahanth Deo Muni Das as is manifest from the order dated 27.9.1981 passed in First Appeal No. 713 of 1979 placed at Annexure-B to the counter affidavit of the Board filed on 23.9.2011. A compromise was entered into by the contesting parties i.e. the appellant through its Shebait and the defendants and which petition is placed at Annexure-2 to the proceedings. In terms of the compromise entered into by the three contesting parties i.e. the appellant Granth Sahib, the father of the petitioner no. 1 and the father of the petitioner no. 2, each agreed to a 1/3rd share in the property of the Sylvan House and whereunder the appellant was entitled to 1/3rd share towards the North, Dina Nath Banerjee, the father of petitioner no. 2 was given 1/3rd share in the middle of the house and Chandra Nath Banerjee, the father of the petitioner no. 1 got 1/3rd share towards the South of the house. A sketch map showing the division was also enclosed to the compromise petition placed at Annexure-2. Upon consideration of the compromise petition, a Division Bench of this Court by order dated 11.12.1981 permitted the parties to enter into a compromise and while recording as such, the appeal was disposed of in terms of the compromise. Copy of the order dated 11.12.1981 passed by the Division Bench in First Appeal No. 713 of 1979, is placed at Annexure-3 to the writ petition. A decree was passed in terms of the compromise, which also forms part of Annexure-3 to the writ proceedings. Following the compromise aforesaid, the contesting parties came in possession of their respective shares in terms of the demarcation set out in the sketch map appended to the compromise petition. The compromise having been accepted under order dated 11.12.1981, the decree was issued on the even date.

6. It is the case of the petitioner that while the matter had been set at rest and each of the parties were in possession of their respective share, a petition came to be filed at the instance of the respondent no. 4 giving rise to Case No. 24 of

2008 filed under the provisions of Section 43A read with Sections, 43D, 43E and 43F of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as the "Act"). The said petition filed on 17.10.2008 was heard on 27.2.2009 but prior thereto a petition was filed seeking permission to withdraw the case with liberty to file a fresh case in the subject matter. Copy of the application, the withdrawal application filed on 20.1.2009 together with the order sheet containing the order dated 27.2.2009 dismissing the case as withdrawn, form part of Annexure-4 series. After withdrawing the aforesaid case, the respondent no. 4 has filed a fresh case again under the provision of Sections 43A, 43D, 43E and 43F of the Act bearing Case No. 3 of 2009. The writ petitioners objected to the petition filed on behalf of the respondent no. 4 and raised a preliminary objection as to the very maintainability of the proceedings. The same having been disposed of by the impugned order, hence the present writ petition.

7. Mr. Sanjay Singh, learned counsel appearing on behalf of the petitioners, with reference to the copy of the Will placed at Annexure-1 to the writ petition submitted that the property in Sylvan House situated at Sabji Bagh, Patna is not mentioned in the schedule of the properties referred to at the foot of the Will. It is submitted that the late Kedarnath Banerjee in addition to the landed properties also owned two houses one at Narhat in the district of Gaya and the other at Patna. He submits that a cursory glance at the schedule of properties referred to in the Will shows that the house property in Sylvan House was not endowed in favour of Shri Granth Sahib. It was contended that the preceptor seeking possession of the property in Sylvan House and other properties, filed the title suit in question bearing T.S. No. 112 of 1961 and which prayer was negated. With reference to the statement made in paragraphs 9 and 10 of the counter affidavit it was argued that the respondents themselves accept that "Shri Shri Shri Granth Sahib" had been installed by the spiritual preceptor of late Kedarnath. Banerjee, namely, Mahanth Thakur Das Jee, at his Guru Dwara at Dhania Pahari, Pargana Narhat, in the district of Gaya and that Mahanth Ram Lakhan Das who filed the title suit, was a Chela of Mahanth Thakur Das and had filed the returns as required under the Act, in 1953-54 while describing the trust in question as Udasin Nanak Shahi Sangat but the property mentioned therein did not include the Sylvan House rather referred to the landed properties in the district of Gaya. Copy of the Registration Certificate has been placed at Annexure-A to the counter affidavit. Learned counsel, with reference to the returns, submits that in fact there is neither any reference in the returns to the Udasin Nanak Shahi Sangat nor the details of the movable and immovable properties mentioned in column 10, does refer to the Sylvan House. Learned counsel, with reference to the judgment and decree passed in the Title Suit No. 112 of 1961 placed at Annexure-C series to the supplementary counter affidavit filed on behalf of the Board on 18.2.2011 (although mentioned as counter affidavit), submits that even the trial court while partly decreeing the suit in favour of the plaintiff had clearly held that the plaintiff would not be entitled to get a decree for recovery of possession over property mentioned at item no. 1 of the schedule

and which is the property in Sylvan House situated at Mohalla Sabji Bagh. He thus submits that the recovery of possession of the property in Sylvan House having been refused by the trial court, the right of the petitioners to hold possession of the property in Sylvan House was established. It was contended that the shebait on behalf of "Shri Shri Shri Granth Sahib" feeling aggrieved by the judgment and decree insofar as it denied possession of the property in Sylvan House to the plaintiff, filed a first appeal which was registered as First Appeal No. 713 of 1979. The appeal was preferred by Mahant Ram Lakhan Das and who deceased during the pendency of the appeal and was substituted by his successor Mahant Deo Muni Das and who entered into a compromise with the respondents to the appeal i.e. the father of the present petitioners. The compromise petition is placed at Annexure-2 to the writ petition and under which, each of the contestants to the appeal were given 1/3rd share in the property of the Sylvan House more appropriately demarcated in the map enclosed to the petition. Learned counsel contends that the permission having been granted to the parties to enter into a compromise under the order passed on 11.12.1981 in the appeal together with the decree forming part of Annexure-3, the matter was set at rest and the issue became conclusive and binding on the parties. Learned counsel, with reference to a letter of the successor Mahant Deo Muni Das placed at Annexure-10 to the Interlocutory Application, submits that the shebait of the trust property consequent upon the disposal of the appeal under the compromise decree dated 11.12.1981 duly informed the development to the respondent Board through a letter dated 26.8.1982. It is contended that Mahant Deo Muni Das has brought the entire information regarding the litigation between the parties and its disposal under the compromise decree by the High Court, to the notice of the Board by the said representation. A further prayer had been made by Mahant Deo Muni Das seeking permission to sell landed properties while filing returns for the period 1966-67 to 1981-82. The request made by Mahant Deo Muni Das was responded to by the Board by letter dated 27.8.1982 granting permission to Mahant Deo Muni Das to sell the property in favour of one Smt. Rani Singh. The copy of the said order is placed at Annexure-10/1 of the writ petition. The return so filed by Mahant Deo Muni Das has been brought on record by respondents in the counter affidavit filed on behalf of the respondents 4 to 6 at Annexure-C and which nowhere refers to the property in Sylvan House rather a specific reference has been made to the landed properties at Gaya. Learned counsel, with reference to the return filed by Mahant Deo Muni Das placed at Annexure-C of the counter affidavit of the respondent nos. 4 to 6, submits that it is for the first time when on 26.8.1982, a reference was made to Nanak Shahi Udasin Sangat, Dhaniala Pahari. Learned counsel contends that prior to the said returns there is no single document which shows that the trust property belonged to the Nanak Shahi Udasin Sangat. Learned counsel submits that even the details of the property mentioned at serial no. 10 merely refers to landed properties admeasuring 42 bighas. Learned counsel submits that the returns filed by Mahant Deo Muni Das for subsequent period i.e. 1966-67 to 1981-82 also reiterates the position and

refers to the said properties situated at Gaya. Learned counsel submits that right from the stage of execution of the Will followed by its probate together with institution of the title suit and until the final disposal of the issue by virtue of the compromise decree in First Appeal 713 of 1979, there is no whisper of the Nanak Shashi Udasin Sangat nor any document has been brought on record whereunder the property which was endowed in favour of "Shri Shri Granth Sahib" was transferred in favour of the Nanak Shashi Udasin Sangat. Learned counsel for the petitioners, with reference to the statement made in paragraphs 13 to 16 of the counter affidavit filed on behalf of the Board, submits that it is "Shri Granth Sahib" who was all along contesting the issue and there is complete absence of evidence regarding the taking over of the trust property by the Udasin Sangat. He submits that this position has also not been explained in the counter affidavit. Learned counsel, with reference to the registration certificate placed at Annexure-A to the counter affidavit, submits that for the first time a reference was made to Nanak Shashi Udasin Sangat. It is contended that although the certified copy of the registration is dated 21.9.2011 but no specific date has been mentioned therein as regarding the date of its issue. It is contended that although Mahant Deo Muni Das while filing the returns has made reference to the Nanak Shashi Udasin Sangat but no such statement was made on his behalf in the appellate proceedings. It is thus contended that there is complete absence of any evidence as regarding the change over in the nature of the trust property from "Shri Granth-Sahib" to Nanak Shashi Udasin Sangat. Learned counsel, with reference to the preamble of the Bihar Hindu Religious Trusts Act, submits that the petitioner who is a tenant in the Sylvan House can neither be a person interested nor a person aggrieved so as to maintain the application before the tribunal. It was thus contended that in the background where the application u/s 43B of the Act was filed by a person having no locus and in the circumstances where the title and possession of the petitioners over the property in Sylvan House stood concluded under the compromise decree of the High Court and in view of the fact that the respondent-Board had all along accepted this position without raising any issue in this regard, it is in these very circumstances that the petitioners had raised the issue of jurisdiction before the Tribunal, to proceed in the matter but the Tribunal without appreciating the relevancy and seriousness of the objection, has proceeded to dispose of the same inter alia on grounds of taking it up at the final adjudication of the matter. It is contended that where the petition itself has been filed by a tenant of the petitioners residing at Sylvan House having no locus to maintain the application and/or to raise any issue of mismanagement coupled by the judicial pronouncement of this Court in the compromise decree passed in First Appeal 713 of 1979, allowing the Tribunal to proceed with the matter, would be an abuse of the process of law.

8. Mr. Ganpati Trivedi, learned counsel for the Board, responding to the contentions of learned counsel for the petitioners with reference to Section 43A of the Act, submits that as the Act itself authorizes any person interested in protecting a trust property from being wasted or mismanaged, he can approach

the Tribunal constituted u/s 43 of the Act by filing an appropriate application u/s 43A of the said Act, as has been filed in the present case. It is contended that the applicant-respondent no. 4 herein being a follower of the Nanak Shahi Udasin Sangat was fully entitled to file any such application for protecting the interest in the trust property, under the provisions of the Act. It was thus submitted that there is no absence of locus in the applicant Mohan Lal Agrawal in filing the application in question before the tribunal. It was next submitted that the trust was registered with the Board under the Act on the basis of the returns filed by Mahant Ram Lakhan Das, the successor to Mahant Thakur Das Jee and the evidence whereof is present in the Registration certificate placed at Annexure-A. Responding to the contention of the petitioner regarding non-mentioning of the property in Sylvan House in the schedule of property mentioned in the returns which included only the landed property at Gaya, learned counsel submitted that as the house in question was to remain in the possession of late Kedar Nath Banerjee and his legal heirs at the stage of the filing of the returns, hence the same was not included in the returns. Learned counsel for the Board also relying upon the judgment and decree passed in Title Suit No. 112/1961, submits that the suit was decreed in favour of the trust as against the ancestors of the petitioners save and except that a right to possession was granted to late Hari Das Banerjee and his legal heirs until his lifetime. It was further contended that the right to possession granted by the trial court was not for generation to generation but limited to the life time of late Hari Das Banerjee and his legal heirs. It is contended that the compromise entered into between the successor to Mahant Ram Lakhan Das, namely, Mahant Deo Muni Das, was collusive and not binding on the Board. It was submitted that whereas Mahant Ram Lakhan Das Jee filed the appeal before this Court challenging the denial of possession of the property in Sylvan House, Mahant Deo Muni Das claiming to be a successor to Mahant Ram Lakhan Das after getting substituted in the appeal upon death of Mahant Ram Lakhan Das, wholly illegally, entered into a compromise with the father of these petitioners. Learned counsel contends that the so-called compromise between the parties was a fraud on the court committed by Mahant Deo Muni Das, in collusion with the father of the petitioners for obtaining a decree in favour. With reference to the provision of Section 44 of the Act it was submitted that the compromise was barred as trust was registered under the Act and Mahant Deo Muni Das conscious of this position, yet suppressed this fact from this Court in the appellate proceedings. Learned counsel contended that no appeal was preferred by the father of these petitioners against the judgment and decree passed in Title Suit No. 112 of 1961 and thus the judgment had become binding on them and the possession of property in the Sylvan House ought to have reverted back to the Board after the death of the legal heirs of late Hari Das Banerjee i.e. the respective father of the present petitioners. Learned counsel advancing his argument went on to submit that a compromise decree obtained from this Court by the parties to the appeal, was a nullity and can be ignored. It was submitted that in the circumstances the judgment and decree passed in the Title Suit would continue to operate. Learned counsel in support of his

submissions that the compromise decree having been obtained by a practice of fraud by the contesting parties, is a nullity, has relied upon the following decisions:-

(a) A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, ;

(b) S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, .

9. Learned counsel, with reference to a judgment of this Court since reported in 1967 B.L.J.R. 656 (Dhanushdhari Prasad Singh vs. Awadh Rai and Others), submits that a Division Bench of this Court has been pleased to set aside a compromise entered into between the parties which was de hors the provisions of Section 44. It was submitted that a compromise decree is not a decision of the court but is an acceptance of an agreement of the parties and which cannot operate as a res judicata nor can be binding on the Board. Learned counsel in support of his proposition has relied upon a judgment of this Court since reported in Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others, . Learned counsel, with reference to Section 23 of the Contract Act, submitted that the legal position is very clear and any agreement which is contrary to law, is void. It was contended that as Mahant Deo Muni Das was not registered as the shebait of the trust property in terms of Section 28(2)(s) of the Act and thus incompetent to enter into a compromise. Learned counsel even while admitting the position that the only document to support the contention of the Board that the property in Sylvan House formed part of the trust property by reason of endowment made by late Kedar Nath Banerjee, is the judgment and decree in Title Suit No. 112 of 1961, submits that as the said judgment and decree passed by the trial court in the title suit was never put to question by the petitioners or their respective fathers, the same would be binding on them and would be conclusive on the issue that the property in Sylvan House is a trust property. It was next submitted that even accepting the compromise decree passed by this Court for the sake of argument yet the property in Sylvan House having vested in the Board by virtue of the Will and the judgment and decree in title suit as also in absence of proper permission as required u/s 44 of the Act, even if Mahant Deo Muni Das Jee admitted to forego 2/3rd share of the property, yet until such time the said property was registered with the petitioners u/s 17(2) (VI) of the Registration Act, no fresh title would be created since the property stood transferred to the Board. Learned counsel in support relied upon a judgment reported in AIR 1996 SC 196 (Bhoop Singh vs. Ram Singh Major) para-16 onward, in support of his proposition. It was argued that an unnecessary cloud is sought to be created by the petitioners with reference to the plaintiff i.e. "Shri Granth Sahib" being in the nature of Sikh trust and thus was outside the purview of the Act. With reference to a judgment of the Supreme Court since reported in Pritam Dass Mahant Vs. Shiromani Gurdwara Prabandhak Committee, thereof, it was submitted that the distinction between Sikhism and Udasin Sangat had been discussed in the judgment. It was submitted that the Supreme Court

has held that even the followers of Nanak Shahi Udasin Sangat do recite the Guru Granth Sahib and attend the Guru Dwara and thus the mere mention of "Shri Granth Sahib" as the owner of the property on the basis of the endowment made by late Kedar Nath Banerjee would not nullify this position especially in the light of the accompanying documents and in view of the returns filed by the Mahants which in no uncertain terms demonstrates that the trust in question was not a Sikh trust but a Nanak Shahi Udasin Sangat Trust which is fully governed by the provisions of the Act and the property of whom can be regulated under its provision. Learned counsel submitted that Babu Thakur Das Jee, the preceptor of the executant of the Will, namely, late Kedar Nath Banerjee was a follower of Nanak Shahi Udasin Sangat as is manifest from the return filed on 14.11.1952 and also the Certificate of Registration placed at Annexure-A to the counter affidavit. Learned counsel thus submitted that in absence of any evidence to the contrary as regarding the nature of the trust, there are sufficient evidence to support the position that the trust in question Is not a Sikh trust but a Nanak Shahi Udasin Sangat Trust. It was contended that the applicant before the Tribunal had all rights to raise the issue as he was covered under the provisions of Section 2(g) of the Act. With reference to Section 50 of the Act it was submitted that though the applicant had not impleaded the Board as party to the proceedings but the Board even suo motu can seek impleadment. Learned counsel concluding his argument submitted that the learned Tribunal while considering the preliminary objection, has not rejected the objection raised by the petitioners rather has merely reserved it for consideration at the stage of final disposal considering the fact that the adjudication thereof required leading of evidences. He thus submits that in absence of any jurisdictional error on the part of the tribunal in passing the order, this Court may not interfere with the same in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

10. Mr. R.K. Shukla, learned counsel appearing for respondent no. 9, supports the case of the petitioner and submits that he is a Builder and has developed the property in Sylvan House. It was also sought to be contended that until the filing of the application u/s 43A of the Act by the respondent no. 4, before the tribunal, there was no action either on the part of the trust or the Board in interfering with the right of the petitioners.

11. Mr. Kundan Bihari Singh, learned counsel appearing for the respondent no. 10 who is a purchaser of 1/3rd property from Mahant Deo Muni Das, while assailing the impugned order, submits that the learned tribunal while brushing aside the objection raised by the present petitioners to be considered at the stage of final hearing and disposal, has failed to appreciate the scope and intent of the provisions underlying Order 7 Rule 11 of the Code. It was sought to be canvassed that if the application itself is held to be not maintainable, there is no occasion for the tribunal to proceed with the same and in which circumstance the preliminary objection had to be tested at the first instance. Questioning the locus of the respondent no. 4 to maintain the application before the tribunal, he

submits that except for a bald statement by the respondent no. 4 claiming to be a follower of the Nanak Shahi Udasin Sangat, no document has been filed in support thereof. With reference to the provisions of Section 43B(1) of the Act it was submitted that once an objection has been raised by the petitioners then it was incumbent on the part of the Tribunal to have decided at the first instance whether at all the property in question was a trust property and even for the sake of assumption if it is presumed to be a trust property, whether it belonged to a Sikh trust or a Hindu Trust. He thus submits that without deciding this issue, the Tribunal cannot have proceeded in the matter. On the issue of res judicata and merger, learned counsel has referred to a judgment of the Supreme Court reported in Sheodan Singh Vs. Smt. Daryao Kunwar, and submits that it has been held that disposal of an appeal is a confirmation of the order of the trial court and thus would operate as a res judicata. With reference to a judgment of the Supreme Court reported in Phool Patti and Another Vs. Ram Singh (Dead) through Lrs. and Another, , it was submitted that the judgment of the Supreme Court reported in Bhoop Singh Vs. Ram Singh Major and others, ; has been referred to a larger Bench.

12. Mr. Rajesh Mohan, learned counsel appearing for respondent no. 7 submits that he has nothing further to add in the matter.

13. Mr. Ashutosh Ranjan Pandey, learned counsel appearing on behalf of the applicant before the tribunal-respondent no. 4 herein as also on behalf of the respondent nos. 5 and 6, submits that he is a follower of Guru Granth Sahib and in terms of Section 43F(2), it is submitted that onus is on the petitioners to prove the contrary. Learned counsel in support of his submissions has relied upon a judgment since reported in AIR 1989 Patna 349 (Ishwari Prasad Jhunjhunwala vs. Bihar State Religious Trust Board); paragraphs 24 and 25. It is submitted that the applicant before the Tribunal has no personal interest in the property rather his only endeavour is to protect the trust property from being squandered by the writ petitioners and to protect it from its mismanagement. With reference to the compromise decree it was submitted that the agreement entered into between the parties was hit by the provisions of Section 51 of the Act and thus a compromise de hors the law can be suitably ignored. Learned counsel in this context has also relied upon Section 23 of the Contract Act and a judgment of the Hon''ble Supreme Court since reported in Sita Ram Vs. Radhabai and Others, .

14. Mr. Ganpati Trivedi, learned counsel for the Board sought the court's permission to submit that the power of the Board vested u/s 43 has been suitably discussed in a judgment of Division Bench of this Court reported in 1968 PLJR 507 (Bihar State Religious Trust Board vs. Mahanth Jaleshwar Gir) and thus there was no infirmity in the proceedings requiring any interference. Learned counsel consented to the remand of the matter for decision on the preliminary issue.

15. Mr. Sanjay Singh, learned counsel for the petitioners in his rejoinder while

reiterating his submissions contended that the property owned by his ancestors included two houses of which one was situated at Narhat in the district of Gaya and the other at Patna which is the subject matter of the present proceedings. He submitted that the schedule at the foot of the Will, though referred to the house at Narhat but it did not make any reference to the Sylvan House at Patna. It was contended that the records of the proceedings manifest that the property was bequeathed by late Kedar Nath Banerjee on "Shri Shri Granth Sahib" and who has contested the matter up to the High Court. "Shri Shri Granth Sahib" contesting the issue was never registered with the Board rather it is the own stand of the respondents that the trust registered with the Board was Nanak Shahi Udasin Sangat and who was never bequeathed with the property. Learned counsel submitted that although the stand of the Board is that the returns in relation to the property was filed as back as in the year 1952 in the name of Nanak Shahi Udasin Sangat by Mahant Ram Lakhan Das but the legal entity contesting the matter before the trial court in a suit filed in 1961 i.e. almost 10 years after the filing of returns in 1952 by Ram Lakhan Das, was "Shri Shri Granth Sahib" and not the Nanak Shahi Udasin Sangat. Learned counsel thus submitted that as the property stood vested in "Shri Shri Granth Sahib" who is not registered with the trust as well as the fact that although the Nanak Shahi Udasin Sangat is registered with the trust but the property never vested in the said trust, the jurisdiction of the tribunal to proceed in the matter, is wanting. Learned counsel in this regard has relied upon a judgment of this Court reported in AIR 1974 Patna 95 [: 1973 PLJR 509] (Bihar State Religious Trust Board vs. Acharya Mahanth Amrit Das and Another); paragraph 24. With reference to the letter of Mahant Deo Muni Das placed at Annexure-10 to the Interlocutory Application it was submitted that Mahant Deo Muni Das while submitting the returns from 1966-67 to 1981-82 sought permission of the Board to sell the 1/3rd property in Sylvan House, for repair of the Math property, the temple etc. at Dhania Pahari. It was submitted that the letter having been written on 29.8.1982 and the compromise decree having been brought to the notice of the respondent Board, it took almost 30 years for the Board to realize that the property in Sylvan House was a trust property and that the compromise entered into between Mahant Deo Muni Das and the petitioners was an act of fraud and that also on an application filed by a tenant in the property. He thus submits that not only the order impugned in the present proceedings but the entire proceedings itself pending before the Tribunal is without jurisdiction and thus fit to be set aside.

16. Mr. Suraj Samdarshi had sought to intervene in the proceedings on behalf of the Guru Dwara Prabandhak Committee through Taktha Harmandir Sahib Jee, Patna City but considering the issue at hand, this Court did not deem it necessary to allow the impleadment and I.A. No. 7050 of 2011 is accordingly disposed of.

17. I have heard learned counsel for the parties and have perused the materials on record. By order passed on 11.11.2011, teamed counsel was permitted to

amend the cause title of the proceedings by incorporation of Article 227 of the Constitution of India.

18. By allowing the petitioners to amend the cause title in the light of the prayer made in the Interlocutory Application bearing I.A. No. 5294 of 2011, the petitioners have obtained permission to question not only the order impugned passed by the Tribunal but the entire proceedings arising therefrom.

19. Having heard learned counsel appearing on behalf of the contesting parties and having perused the materials on record this Court is convinced that this application has to be allowed for more than one reasons.

20. The petitioners had very rightly questioned the locus of the respondent nos. 4 to 7 who are tenants in the property which is subject matter of dispute i.e. the Sylvan House situated at Sabji Bagh in the town and district of Patna to maintain the application before the Tribunal. The locus of the respondent nos. 4 to 7 to raise the issue was defended by the Board by taking recourse to the provisions of Section 2(g) read with Section 43A of the Act. Section 2(g) of the Act defines "person interested in a religious trust" and inter alia means a person who is entitled to receive any pecuniary or other benefit from a religious trust and includes any person who has right to worship or to attend at the performance of any worship in any religious institution connected with such trust or to participate in any religious or charitable administration under such trust. The definition also includes the founder, any descendant of the founder or any trustee.

21. Section 43A of the Act incorporated under the amendment introduced under the Amending Act of 2007, vests a right in the Board or with the permission of the Board, any religious trust or any two persons interested in the affairs of the public trust, to file an application for recovery of alienated property, removal of encroachment or for decision on property disputes referred to it under any provision of the Act. Upon receipt of an application raising such issue, the Tribunal shall hold a summary enquiry in the manner prescribed and pass appropriate orders.

22. Section 43B of the Act refers to decision on property disputes and provides that the Tribunal shall decide the following property disputes, namely:-

(a) Whether any immovable property is or is not a property of a particular trust, and

(b) Whether any particular property claimed by Mahanth, Shebait, Priest or a trust is his personal property or the property of the temple or Math.

23. Another relevant provision would be Section 28(2)(u) which empowers the Board to decide all disputes whether any trust is a public or a private trust in accordance with the definition u/s 2(1) of the Act and which decision would remain in force until set aside by a competent court. Both the amendment to Section 43 and Section 28(2)(u) were incorporated under the Amending Act of 2007. Prior thereto the Board was not vested with such power rather the power

to decide the nature of a trust was vested in an authority to be appointed by the State Government by notification in the official gazette. This issue stands concluded by a Division Bench judgment of this Court reported in 1968 P.L.J.R. 507 (supra).

24. Thus before a person claiming to be interested in the affairs of a religious trust proceeds to file an application alleging mismanagement of a trust property and for restoration of its possession under the right vested u/s 43A of the Act, he has not only to satisfy the essentials required u/s 2(g) but also has to seek permission from the Board before filing such application and this exercise can only be permitted if and only if the property in question is a trust property.

25. I am afraid the essentials noted hereinabove to maintain an application claiming to be a person interested and alleging mismanagement, do not stand satisfied in the present case. A suo motu declaration of being a person interested, does not vest the private respondent nos. 4 to 6 with the right to question the possession of the petitioners over the property in question. More so when their existence within the precincts of the property is by virtue of the permission granted by the petitioners in the capacity of landlords. The applicants before the Tribunal owing their existence as a tenant in the property to the permission granted by the petitioners in the capacity of a landlord, cannot turn around and question their authority as a landlord, until they continue to be tenants in the property and which would act as an estoppel in the light of the provisions of Section 116 of the Indian Evidence Act, 1872. As is manifest from the records, suits for eviction of these tenants are pending in the courts of competent jurisdiction. It is thus rather innovative of these tenants to have raised the issue of mismanagement of the property in Sylvan House, even while holding tenancy in the same property under the grace of the petitioners. In view of the aforesaid position, the applicants before the Tribunal had no locus to maintain the application.

26. Another rather interesting aspect of the matter is that the Board was not added as a party to the proceedings before the Tribunal and in whose absence the proceedings could not have continued and had to be dismissed on grounds of non-joinder of parties. The stand taken by the learned counsel appearing on behalf of the Board before this Court that the Board could suo motu intervene in the proceedings, would not cure the defect.

27. Coming to the merits of the case, a lot has been contested by the learned counsel for the Board on the compromise recorded by this Court in the decree passed in First Appeal No. 713 of 1979 (Annexure-3 series). The compromise decree having been recorded as back as on 11.12.1981 and information thereto having been communicated to the Board on 26.8.1982 (Annexure-10) by the appellant Mahanth while seeking permission to sell a part of the property received under the compromise decree, for maintenance of the trust property and due permission being granted by the Board immediately on 27.8.1982 (Annexure-10/1), it does not stand in the mouth of the Board now to question

the action of the appellant in entering into a compromise and to term the same as a fraud on court committed by the parties. The entire issue being open before the Board as back as in the year 1982 it has taken a third person and 27 years for the Board to realize that their property is being squandered by the petitioners. The argument of learned counsel for the Board commenting upon the compromise decree recorded by a Division Bench of this Court, even if accepted at its face value, yet does not provide any succour to the Board as even the trial court had rejected the relief of recovery of possession of the property in Sylvan House to the plaintiff while upholding the right of residence of the descendants of Hari Das Banerjee in the Sylvan House as is manifest from paragraphs 19 and 20 of the judgment and decree of the trial court in Title Suit No. 112 of 1961 and reproduced hereinbelow for ready reference:-

(19) Learned lawyer on behalf of the defendants has contended that by the last line of para 3 of the Will defendants have been given right of residence in the Patna House i.e. Item No. 1 property, Sylvan House, Holding No. 94/102/101, Circle No. 17 of Ward No. 8, Mohalla- Sabji Bagh within Patna Municipal Corporation of Schedule-I of the plaint. On this point learned lawyer on behalf of the plaintiff has contended that by the aforesaid recitals of the Will right of residence was given to only Babu Hari Das Banerjee which right was personal right of Hari Das Banerjee given to him by the Will which extinguished after his death and his heirs defendants cannot acquire the same right. But, in my opinion, this contention of learned lawyer on behalf of the plaintiff is not correct and the contention of learned lawyer on behalf of the defendants on this point appears correct...

(20) Issue No. 5-in view of the above findings plaintiff is entitled to get decree for recovery of possession of the property of Item No. 2 of Schedule-I of the plaint. In view of the fact of the right of residence of the defendants in the property of Item No. 1 of Schedule-I of the plaint, plaintiff is not entitled to get a decree for recovery of possession over the same till the right exists...

28. The trial court thus while holding the right, title and interest of the plaintiff over the suit properties also upheld the right of residence of defendants i.e. the ancestors of the present petitioners over property which was at Item No. 1 of Schedule No.-1 i.e. the property in Sylvan House at Patna and it is this denial and refusal of the relief that the First Appeal was preferred by the plaintiff and which ended in a compromise. Thus even if the contention of counsel for the Board is accepted for the sake of argument, yet the situation does not alter for the Board and the petitioners derive their the right of residence in the property of Sylvan House at Patna by virtue of judgment and decree passed by the trial court.

29. This brings us to the issue whether the plaintiff Shri Guru Granth Sahib in whom the property in question had vested, was a Sikh trust or a Hindu trust. The very fact that the returns were filed with the Board as back as on 14.11.1952 with no rival claims thereto contesting this position of the plaintiff of being a Hindu trust and which position continued throughout the title suit proceedings

until its compromise in the year 1981 and whereafter a second set of returns from retrospective date was filed with effect from 1966-67 to 1981-82 showing the nature of trust as a Hindu trust, again with none not even the present petitioners controverting this position, it shall be deemed that the nature of trust created by and under the Will of late Kedar Nath Banerjee, was a Hindu Trust and regulated under the provisions of the Act. The petitioners at this stage cannot be permitted to contest that the trust created under the Will; was a Sikh Trust and not a Hindu Trust.

30. Even with the nature of trust created under the Will of late Kedar Nath Banerjee of which late Hari Das Banerjee was the executor and administrator being a Hindu trust governed under the Bihar Hindu Religious Trusts Act, the right of the present petitioners does not get affected nor obliterated and their right of residence in the Sylvan House would be protected and governed by the judgment and decree passed in the Title Suit which ultimately concluded under a compromise decree passed by this Court.

31. In view of the legal position emanating from the judicial pronouncements, the objection raised by the learned counsel for the Board relying upon the provision of Section 17 of the Registration Act and Section 44 of the Religious Trusts Act loses its significance. The proceedings before the Tribunal including the order impugned is neither sustainable on grounds of absence of locus nor on merits.

32. In the result, this application is allowed. The entire proceedings arising from Case No. 3 of 2009 pending before the Bihar Hindu Religious Trust Tribunal constituted u/s 43 of the Act including the order dated 4.5.2010 is quashed and set aside. The parties shall bear their own cost.