

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18421 of 2013

With

Interlocutory Application No. 5586 of 2014

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Tok Narayan Das son of Late Siya Ram Das, resident of Village+ P.O. Lalabhadsara, P.S. Dulhin Bazar, Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Bihar State Board of Religious Trust, Mandivi, Vidyapati Marg, Patna-800001, through its President.
3. The Chairman, the Bihar State Religious Trust Board, Patna-1.
4. The Special Officer, Bihar State Religious Trust Board, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamala Prasad Roy

For the Respondent No.1 Mr. Dhananjay Kumar, AC to GP-16

For the Respondent No.2 to 4: Mr. Ganpati Trivedi, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 26-02-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of notification dated 22.04.2013 (Annexure-1/A) issued under the signature of the respondent Chairman of the Bihar State Board of Religious Trust, Patna, whereby for smooth management of Shri Ram Janki Laxman jee and Hanuman Jee Thakurbari, registered as a religious trust under the provisions of Bihar Hindu Religious Trust Act, 1950 (In short ' the Act'), a scheme has been settled and a trust committee of 11 persons mentioned in that notification has been constituted in exercise of his powers under Section 32 of the Act.

3. Learned counsel appearing on behalf of the petitioner submits that the impugned notification has been issued without giving opportunity of hearing to the petitioner. Therefore, according to him, it is liable to be set aside by this Court on that ground alone. He

further submits that the persons, who have been appointed as members of Trust Committee, have no fair antecedent and, therefore, they ought not to have been made members of the trust Committee for smooth functioning of the trust in question. I.A. No. 5586 of 2014 has been filed on behalf of the petitioner for staying the operation of the aforesaid notification dated 22.04.2013.

4. Learned counsel appearing on behalf of the respondent no. 2 to 4, at the very out set, has raised the question of maintainability of the present writ petition primarily on two grounds: firstly the petitioner has got alternative and efficacious remedy under Section 32(3) of the Act before the learned District Judge. According to him, impugned notification was issued and consequently published in the official gazette constituting a trust committee of 11 persons in exercise of powers under Section 32(1) of the Act, which can be varied/ modified or set aside by the learned District Judge in exercise of powers under Section 32(3) of the Act; Secondly, the persons, who have been nominated as the members of the trust Committee, have not been impleaded as party respondents and, therefore, in their absence, the issue raised on behalf of the petitioner cannot be effectively gone into. According to him, on the ground of non-joinder of necessary party, the present writ petition is liable to be dismissed.

5. After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the petitioner has statutory alternative remedy under Section 32(3) of the Act. This Court is also of the opinion that the issues of facts must be raised and decided by the statutory authorities at the first instance and only thereafter the power of judicial review under Article 226 of the Constitution of India can be effectively exercised and the matter can be decided. This Court further finds that the impugned notification

was issued on 22.04.2013 and since then almost two years have already elapsed. The persons, who have been nominated as the members of the trust committee, have acquired legal right and in their absence, the validity and correctness of the impugned notification cannot be gone into in the present proceeding. Admittedly, the aforesaid members of the trust committee have not been impleaded as the party respondents. Therefore, the present writ petition suffers from vital defect of non-joinder of the necessary parties.

6. For the reasons recorded above, this Court is not inclined to accede to the prayer made on behalf of the petitioner in the main writ petition as also in the interlocutory application. Consequently, the writ petition as also I.A. No. 5586 of 2014 have to fail.

7. However, if so advised, the petitioner shall be at liberty to approach the learned District Judge in terms of Section 32(3) of the Act. If such a petition is filed on behalf of the petitioner after impleading all the necessary parties, then that shall be decided in accordance with law without being prejudiced or influenced by any observations or finding recorded in the present order.

8. The writ petition stands finally dismissed with the observations made above, but the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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