

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8252 of 2015

=====

M/s Bol Bum Developers having its office at Mohalla- Dharmganj, P.S., Town & District- Kishanganj through its partner namely, Pramod Baid, S/o Sri Surajmal Baid, resident of Saugarpatti Road, Kishanganj, P.S. & District- Kishanganj

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Kishanganj.
3. The Deputy Development Commissioner-cum-Nodal Officer, Zila Jan Shikayat Koshang, Kishanganj. null null
4. The Sub-Divisional Magistrate, Kishanganj.
5. The Bihar State Religious Trust Board through its Chairman, having its office at Vidyapati Marg, Patna.
6. Abhinav Modi, President, District Unit of Bhartiya Janta Party, Kishanganj.

.... Respondents

=====

Appearance :

For the Petitioner : M/s Awadhesh Kumar Pandey and
Rajeev Lochan, Advocates

For the State : Mr. Yogendra pd. Sinha, AAG 15 and
S. Kumar, AC to AAG 15

For the Respondent- : Mr. Shekhar Singh, Advocate
Board

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-04-2016

Heard learned counsel for the petitioner, the State and the Respondent Board.

Petitioner is aggrieved by order recorded on the margin of Annexure 11 passed by the President of the Bihar State Religious Trust Board (hereinafter referred to as 'Board') by which he has declared for its registration as a public trust with the Board.

It is contended that respondent no. 6, in view of



political rivalry, had written to the President, Bihar State Religious Trust Board vide Annexure 11 that, on the plot numbers described in the petition, a Shiva Temple and Dharamshala is existing since long, therefore, that should be registered with the Board and then on the margin of the letter it appears that such order has been passed by the President of the Board. It is also contended on behalf of the petitioner that the order appears to have been passed without any inquiry, without ascertaining as to whether any material is there for passing such order or not. It is urged that the President of the Board even did not bother to hold an inquiry regarding as to whether there exists a temple or Dharamshala or whether it is public trust or not. That apart, it is further contended that the petitioner is purchaser of lands vide Annexure 1. It is submitted that one Indira Devi Agarwal purchased the said lands from Thirani family and from Indira Devi Agarwal the petitioner has purchased the land through Annexure 1 and 1/1, i.e., the registered sale deeds. It is also contended that the issue as to whether the temple as well as Dharamshala / Atithishala are public trust property or private trust property was raised, considered and decided already on earlier occasion by competent authority under Section 43 of the Bihar Hindu Religious Trust Act, 1950 vide judgment dated 12.9.1967 itself a copy of which has been appended as Annexure 3. Therefore, there was no occasion for

registration of the temple and Dharamshala at the associated land with the Board.

On such issue having been raised, notices were issued to respondent no. 6 and the Board was also granted opportunity to file counter affidavit which has been filed by it. However, none had appeared at the time of hearing on behalf of respondent no. 6.

A stand has been taken in the counter affidavit by the Board that under the power vested in the Board vide Section 34 of the Bihar Hindu Religious Trust Act, 1950, the President has taken such decision which is in accordance with law.

However, after hearing both the parties, this Court finds substance in the submissions made on behalf of petitioner. It appears from Annexure 3 that there was already a dispute with regard to nature of the Atithishala and the Shiv Temple attached to it existing on the survey plot no. 909 appertaining to survey khata no. 510 in Kishanganj town, being a private property or a public trust property. The matter was considered by the competent authority in detail, evidences were recorded and ultimately the authority concerned had come to the conclusion on appreciation of evidence led by the parties that the petitioners of that case were able to prove that Atithishala and the Shiva temple attached with it are private properties of the petitioners of that case and the Board miserably failed to prove its

stand.

In my considered opinion, when the issue already stands decided that the Atithishala and the Temple are private properties, such question could not be decided again by the President of the Board and as such the order as contained in margin of Annexure 11 is totally without jurisdiction, specially when the earlier order was never put to challenge by any body and the same had attained finality. Once that is held when the Dharamshala/Atithishala and the Temple attached itself are private property there would be no question of other property associated with it to be declared as public trust property registered with the Board.

Accordingly, this writ application succeeds. The order impugned is quashed and set aside.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	N.A.F.R.
Uploading Date	17.05.2016
Transmission Date	N/A