

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20245 of 2010

Arvind Kumar Singh @ Nanhejee S/O Late Braj Mohan Singh R/O M/H-Afjalpur,
P.S.Pirbahore, P.O.Bankipore, Distt.-Vaishali, Patna.

.... Petitioner/s

Versus

1. Bharat Prasad S/O Late Ratanlal @ Rathlal R/O M/H-Saidpur, Road No.2, H/N.462, P.O.Bankipore, P.S.Kadamkuan, Distt.-Patna, Claiming To Be President Of The Committee, Constituted By The Religious Trust Board For Udaseen Gurudwara Nanakshahi Sangat Devi Asthan, Birbahore.
2. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
3. The Chief Secretary, Govt. of Bihar, Patna.
4. The District Magistrate, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Patna University through the Registrar.
7. The Registrar, Patna University, Patna.
8. The Bihar State Board of Religious Trust through its President.
9. The President, Bihar State Religious Trust Board, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N. Chaubey, Sr. Advocate Mr. Shambhu Sharan Singh, Advocate
For the Respondent no.1	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Shree Nivas Madhuram, Advocate
For the Religious Trust	:	Mr. Shekhar Singh, Advocate
For the State	:	Mr. Chittranjan Sinha, P.AAG-2 Mr. Sudish Kumar, AC to PAAG-2

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 16-09-2016

Heard parties.

The petitioner's stand is that Case No.1/2009 before the Tribunal is not maintainable inasmuch as the case has been filed for removal of encroachment, whereas, a Single Judge Bench of this Court vide Annexure-1 has already held the petitioner to be a tenant, which has attained finality as the review filed by the Board was also dismissed. Therefore, it is urged that since there is no provision under the statute for removal of a tenant by the Tribunal, the proceeding

should be quashed.

Be that as it may, in my view, the said issue should have been suggested and raised by the petitioner before the Tribunal concerned itself.

Learned counsel appearing for the respondent no.1 has submitted that from Annexure-5 itself, it is apparent that petitioner did not raise such issue, however, the court has as a first issue that whether the suit framed is maintainable or not? In my view, the petitioner on the first issue itself can address the Tribunal on the issue of non-maintainability of the concerned case/suit.

Accordingly, this writ application is being disposed of with a direction to the Tribunal to take up the issue no.1 as a preliminary issue and decide the same within a period of two months from the date of receipt/production of a copy of this order.

However, the petitioner would be at liberty to raise the questions which have been raised here and that should be answered by the Tribunal.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
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