

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7950 of 2013

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1. The Managing Committee Of Maharajadhiraj Kameshwar Singh Charitable Trust Through Its Trustee Sriman Kapileshwar Singh
 2. Sriman Kapileshwar Singh S/O Late Raj Kumar Subheshwar Singh Trustee Of Maharajadhiraj Kameshwar Singh Charitable Trust, R/O Rambag Palace, P.S.- L.N.M.U. Campus, Darbhanga, District- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary-Cum-Commissioner Department Of Health And Family Welfare, New Secretariat, Patna
2. The Director (Indigenous Medicine), Directorate Of Health New Secretariat, Patna
3. The Commissioner, Darbhanga Division, Darbhanga
4. The District Magistrate, Darbhanga
5. Kameshwar Singh Darbhanga Sanskrit University Through Its Registrar P.S.- L.N.M.U. Campus, Darbhanga, District- Darbhanga
6. The Principal-Cum-Administrative Officer M.R. Institute Of Indian Medical Science, Mohanpur, Darbhanga
7. The Principal Secretary Department Of Health, Government Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.S. Dwivedi, Sr. Advocate Mr. Sachchidanand Choudhary, Advocate.
For the State	:	Mr. Kinkar Kumar SC-9
For the respondent no.6	:	Mr. Hemanshu Kumar Akela, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
CAV JUDGMENT

Date: 17-09-2016

Petitioner No.1 is the Managing Committee of the Maharajadhiraj Kameshwar Singh Charitable Trust represented through one of the trustees i.e. petitioner no.2. They have claimed their right over Raj Hospital, Darbhanga now known as Maharaja Kameshwar Singh Memorial Hospital (for short 'the Hospital') situated in the District Headquarters of Darbhanga. It is stated that the



Hospital has a total area of 13 bighas, 1 katha & 45 dhurs. Another property belonging to the Darbhanga Raj was resolved to be used to establish Ayurvedic Hospital and Research Centre in the memory of late Rameshwari Devi. Sometime in 1978-79 Maharani Rameshwari Indian Institute of Medical Science, Mohanpure, Darbhanga (for short 'the Institute') was established and inaugurated. The properties attached to the Institute was a Hospital. The said Institute continued to run when under a notification dated 12.01.1985 (Annexure-20) it was taken over by the State Government along with all properties /assets attached thereto under an Ordinance which later became an Act. The petitioner(s) claim that the Hospital was not part of the Institute and hence it was not taken over by the said take over notification whereas the stand of the respondent -State is that by the said notification (Annexure-20) the Institute along with the Hospital attached to it was taken over by the State Government. This issue was agitated before this Court in CWJC No. 13207 of 2008. A Bench of this Court vide order dated 8.5.2012 (Annexure-23) finding difficulty in resolving the issue permitted the petitioner(s) to file a representation before the Authority bringing on record all relevant facts including the settlement arrived between the parties in the Hon'ble Apex Court in relation to a probate proceeding relating to the Will of the late Maharaja which was directed to be considered and disposed of by a

speaking order. In the light thereof, the representation filed by the petitioner(s), was considered by the Principal Secretary to the Government in the Department of Health and rejected vide order dated 07.02.2013 (Annexure-1). The writ application is filed for quashing of the order dated 07.02.2013 (Annexure-1) with ancillary relief(s).

I have heard Sri S.S.Dwivedi, learned Senior Advocate, in support of the writ application, Mr. Kinkar Kumar SC-9 for the State as well as Mr. Himanshu Kumar Akela appearing for the respondent no.6.

Parties have exchanged pleadings.

According to the petitioner(s), the son-in-law of Maharaja had executed a gift on 17.09.1971 in respect of a piece of land measuring an area of 9 bighas, 4 katha and 9 dhurs with construction thereover for establishment of the Institute in the name of Maharani. The Institute was made functional in 1978-79. For better management of the Institute the State Government took over the Institute along with all assets and properties attached to the Institute vide notification dated 12.01.1985 (Annexure-20). A Will was executed by the Maharaja for which a Probate proceeding was filed in Kolkata High Court. The matter travelled to the Hon'ble Supreme Court. A Family settlement was arrived between the parties



in relation to the property of Darbhanga Raj in accord with the Will of late Maharaja which, on presentation, was accepted by the Hon'ble Supreme Court and the case was disposed of. In Schedule –IV of the settlement the property of the Hospital was allotted to the third party for public charitable purposes. It has been submitted that the State Government was a party to the said settlement and as such bound by the terms of settlement. According to this settlement, a charitable trust was to be constituted in the name and style as Maharajadhiraj Kameshwar Singh Charitable Trust which shall manage the properties of the Trust. Few other communication(s) made by the Minister, Department of Health of the Government have been also referred in this regard by the petitioner(s) in order to show that the Hospital was not the property or asset of the Institute when the same was taken over. Finding some inherent lacunae in those communications of the Hon'ble Minister issued in his personal capacity, it is found that they do not throw much light on the controversy. The petitioner(s) have also relied on a communication (Annexure-15) made by Raj Darbhanga to the Chief Executive Officer with respect to creation of municipal holding of the Hospital and realization of the holding tax.

Indisputably, the charitable trust, according to the petitioners was constituted on 26.03.1992 i.e. much after the take over order/notification of the Institute along with its properties and



assets was issued on 12.01.1985. The counsel for the State, on the other hand, has submitted that on bare perusal of the notification taking over the Institute (Annexure-20), it would appear that the Institute along with the Hospital attached to it was taken over by the State Government by the said notification. Referring to the counter affidavit of respondent nos. 1, 2 and 7, it is stated that State Government was not a party to the settlement arrived amongst the members of the family in relation to the Will of late Maharaja placed before and approved by the Hon'ble Supreme Court. He has also referred to the communication of the Assistant Manager, of the Darbhanga Raj wherein no objection with regard to the Hospital in question was communicated to the respondent State.

The respondent- Principal Secretary, in this factual background, examined in extenso the claim of the petitioner(s) with reference to the materials placed by them in support of their claim(s). He found that the agreement/settlement in the Probate case was arrived at between the members of the family which was accepted by the Hon'ble Supreme Court on 22.3.1987 i.e. much after the take over of the Institute by the State Government in 1985. He also noted that under the relevant provisions of the Medical Council Act, the Institute was entitled to have a separate Hospital attached to it for the purpose of proper functioning and recognition. From another order



dated 23.6.2005 passed by the government on the direction of this Court it appears that the Hospital was attached to the Institute when it was taken over. The settlement amongst the family members of late Maharaja was arrived subsequent to the take over of the Institute in which the State was not a party. The said family settlement arrived at before the Hon'ble Supreme Court amongst diverse claimant(s) would thus not be relevant for recording a decisive opinion on the controversy. It was expected of the parties to fairly bring to the notice of the Hon'ble Supreme Court, the notification by which the Institute together with the Hospital attached to it and other assets had already been taken over by the State Government in January, 1985.

Having appreciated the contention of the parties and on perusal of the materials on record placed by both parties the respondent Principal Secretary under the impugned order, found that the Hospital was part of the Institute when it was taken over in 1985. Relying on those documents which were presented before and appraised by the respondent- Principal Secretary for excluding the property of the Hospital treating it to be separate from the Institute, the present writ petition is filed. It is difficult for the writ Court to percolate thick shells of fact and record its decisive opinion on the controversy. The petitioner(s) have relied heavily on the settlement arrived at in the Probate matter before the Hon'ble Supreme Court.

After all it was a family settlement amongst the beneficiaries of the Will which got approval of the Hon’ble Supreme Court in 1987. The State was not a party to the settlement. It was not brought to the notice of the Court that the State Government had in January 1985, taken over the Institute and its attached Hospital besides other properties under an Act which is not in challenge. The said settlement before the Hon’ble Supreme Court in which the State is not a party does not improve the case of the petitioner(s).

Upon hearing both sides and in the light of discussions made hereinabove, this Court is unable to find any patent illegality in the order under challenge meriting interference. The writ application fails and is dismissed.

The order present shall, however, not preclude the petitioners to agitate the grievance before the appropriate forum in accordance with law.

No order as to cost(s).

(Kishore Kumar Mandal, J)

Shyam/-

AFR/NAFR	NAFR
CAV DATE	23.08.2016
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