

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1731 of 2016

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Mohan Ram Das @ Mahendra Das Son of Late Ganpat Das Resident of Village-
Vasudevpur tola Bathnaha, P.s Puraini District Madhepura.

.... Petitioner

Versus

1. The State of Bihar through the President , Bihar state Religious Trust Board, Vidyapati Marg, Patna.
2. The President , Bihar state Religious Trust Board, Vidyapati Marg, Patna.
3. The Superintendent , Bihar state Religious Trust Board, Vidyapati Marg, Patna.
4. Anandi Das Son of late Sahdev Das Resident of Village- Vasudevpur tola Bathnaha, P.s Puraini District Madhepura.
5. Ashok Das son of Anandi Das Resident of Village- Vasudevpur Tola Bathnaha, P.s Puraini District Madhepura.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sushmita Mishra, Advocate
For the State : Mr. Ajit Kumar, AC to GP19
For the Respondent - : Mr. Ganpati Trivedi, Sr. Advocate
Board
For the Respondent : Mr. Ashok Kumar, Advocate
Nos. 4 and 5

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 27-04-2016

Heard learned counsel for the petitioner, the State, the Bihar State Board of Religious Trusts (hereinafter referred to as 'the Board' for sake of brevity), and the respondent nos. 4 and 5.

The order dated 31.8.2015, as contained in Annexure 1, passed by the President of the Board is sought to be challenged by the petitioner.

It is urged on behalf of the petitioner that by such order the earlier decision of the Board, as contained in Annexure 2,



directing one Anandi Das and petitioner Mohan Ram Das @ Mahendra Das to work jointly as Sebait, has been reviewed. It has been decided that the son of the earlier Sebait Anandi Das, namely, Ashok Das, both of them having been impleaded in the present writ application as respondent nos. 4 and 5 respectively, work as Trustee / Sebait.

The order is being criticized on the ground that there is no statutory power of review in the Bihar Hindu Religious Trust Act, 1950 and as such the order of review passed by the President of the Board is without jurisdiction.

Per contra it is urged on behalf of the Board and respondent nos. 4 and 5 that by now it is well settled that even if there is no statutory power of review, the tribunals or the courts has passed order concerned, certain conditions, have a jurisdiction to review its own order. The impugned order has been passed on the basis that the earlier order (Annexure 2) was obtained without producing any documents in favour of the petitioner on the basis of which he would have been made joint Sebait. Thus, it is contended that, apart from suppression of material fact, there also appears to be mistake of the authority in taking such decision.

I find substance in such submission made on behalf of the respondents that under certain conditions, even if there is no

statutory power of review, the courts or Tribunals which have passed the order have inherent power embedded in its jurisdiction to review such order. However, that scope is very limited and have been considered and has been considered and decided by the Apex Court in **Budhia Swain and others vs. Gopinath Deb and others [(1999) 4 SCC 396]**. The Apex Court has laid down as under:

“8. In our opinion a tribunal or a court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.”

From perusal of the aforesaid passage it would be evident that in case the order under review suffers from inherent lack

of jurisdiction or has been obtained by forged or collusion or there has been a mistake prejudicing a party or a judgment was rendered in ignorance of the fact that a necessary party had not been served notice at all or had died and at that point of time the estate was not represented then the order can be reviewed and fresh order on merit could be passed.

However, question is as to whether it was a proper case for such review or whether proper procedure has been followed for reviewing earlier order?

In my view, if it is brought to the notice of the authority that one of aforesaid grounds are available for review of the order then a notice has to go to the party in whose favour the earlier order was passed clearly disclosing the intention of the tribunal or the authority that under a particular ground, from amongst the aforesaid four grounds, there is contemplation of review of the earlier order passed in his favour so that a reply could be filed by such person and considering such reply, a reasoned order would be required to be passed by the concerned competent authority, firstly stating the grounds which are available for review of the order and, thereafter, fresh order on merit which should also be a reasoned one.

However, from perusal of the notice issued upon the petitioner, which has been appended as Annexure 4, it does not appear



that the same was in contemplation of review of the earlier order as the petitioner was merely asked that on what basis he was made Sebait. Secondly, even the impugned order does not speak at all as to what materials were available before it which had led to review or recall or reopening of the matter and, secondly, on what ground a fresh order on merit is being passed. It has merely been recorded that earlier order is fit to be recalled and one Ashok Das has been made trustee / Sebait but no reason has been assigned at all as to why such decision is being taken. Even if the petitioner did not appear after the notice, since the matter was of review of earlier order after a lapse of about 16 years it was required to discuss and consider in detail as to how it was a fit case for review and secondly, as to why a decision to appoint Ashok Das in place of Anandi Das and the petitioner is being taken. That having not been done, in my view the order impugned cannot be sustained in present form.

As a result, writ application succeeds. The impugned order contained in Annexure 1 is quashed and set aside. However, the matter is remitted back to the competent authority for taking a fresh decision on its own merit and in accordance with law after fixing a date of hearing and intimating such date to the petitioner. The petitioner and the respondents would be at liberty to file their respective replies within the time granted which should be considered

by the competent authority while taking a fresh decision and the reasoned order should be passed. It is expected that the whole exercise would be completed within a period of three months from the date of receipt / production of a copy of this order.

This Writ application stands allowed.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	AFR
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