

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11458 of 2013

1. Methodist Church in India through its District Superintendent Of Shahabad, Ara
2. Rev. Alfred Andrews Son Of Late Gladwin Andrews District Superintendent Of Shahabad, Ara, Resident Of Methodist Hospital, Pratap Sagar, Police Station-Dumraon, District- Buxar

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Bhojpur, District- Bhojpur
3. The S.D.O., Sadar, Ara, District- Bhojpur
4. The Circle Officer, Sadar, Ara
5. The Sub Registrar, District Registration Office, Ara
6. The S.P. Mounted Military Police, Ara

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Makardhwaj Upadhyay
For the State Mr. Manoj Kumar Sinha, AC to SC-30
For the intervenor Mr. Aditya Narayan Singh No.1

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 02-03-2016

Inclusion of the land appertaining to khata no. 1766 C.S. khesra nos. 2677 to 2682 (six plots) and 3090 and 3240 measuring a total area of 1.406 hectares (for short the ‘subject land’) in the list of ‘banned’ government land prepared by the respondents (as contained in annexure-5) is the genesis of this writ petition. The petitioner(s) have also prayed for an appropriate order commanding the respondents not to interfere with the right, title and possession of the petitioners over the subject land.

The petitioner no.1 is the Methodist Church in India represented by the District Superintendent of Shababad, Ara (petitioner no.2). The second schedule to the Indian Church Act, 1927 evidences that the Church known as ‘The Holy Saviour’ at Arrah vests in the crown i.e. the then Government of

India. The Church is in occupation of the land in question. Section 3 of the Act provides that notwithstanding any defects or informalities in the documents or proceedings, it is declared that where any church has been consecrated before the commencement of that Act with the approval or at the request of a competent civil authority and the site thereof was at the date of the sentence of consecration and has ever since remained vested in the Crown(Government of India), such consecration shall be deemed to have conferred upon the Indian Church and upon its officials and members respectively; such rights of possession, control, and user of the site and buildings as they respectively would have had if prior to the pronouncing of the sentence of consecration the site and buildings had been conveyed or assured to a person or persons to hold the same on behalf of or in trust for the Indian Church, and that the Indian Church and the officials and members thereof respectively shall have and be entitled to exercise, after the date of severance, all such rights of possession, control and user of the site and buildings of any consecrated church as the Indian Church and the officials and members thereof respectively had immediately prior to that date, and all references to the United Church of England and Ireland, and the church of England or the church of England in India, whether such terms are used with or without the addition of the words 'as by law established' in any petition for or sentence of consecration or in any conveyance or declaration of dedication of the site of any such Church shall be construed as references to the Indian Church. In other words, the provisions of the Act provide that on the date of severance the Indian Church that hitherto belonged to the Crown or the then Government of India will vest in the said Church and the Committee authorized to manage the same. Indisputably, the Government of India, by a



notification dated 23rd March, 1938, severed the said Church from the Church of England and issued a notification published in the official gazette and by reason of such severance the land and the plot of the Church then belonged to the Government of India stands vested in the said Church. The Church became the full owner of the landed property. The Government of India under the mandate of the statute severed itself as the owner of the land and the buildings in question. In Cadastral Municipal Survey of 1923 the subject land was shown as '**Kaisrehind**'. On a part of the subject land there exists a church building and the adjacent land had been shown as a stable, gardens and road. Some part of the land was shown as vacant land. It is also not much in controversy that the petitioners-Church was in possession of the land in its entirety. This factum has been admitted by the government of Bihar vide written statement filed in T.S. No. 139/1979 instituted by some local people seeking a declaration that the vacant land is a playground. Even otherwise, the respondents have not placed on record any document to demonstrate that the Government of India or the present Union of India ever permitted the Government of Bihar to step into the land in question and/or to remain in possession thereof. The dispute raised herein appears to have been raised in different complexions before this Court on earlier occasions. CWJC No. 5906 of 2000 was filed by the petitioners-Church to challenge the order passed by the Settlement Officer. This Court allowed the writ petition by an order dated 29.07.2005 (Annexure-3) and the order of the Settlement Officer-cum-Collector passed against the petitioners-Church was held unwarranted and quashed. The Writ Court restored the order of the Assistant Superintendent of Survey directing for recording the petitioners-Church as the owner of the subject land. Alleging encroachment over the subject land



by the respondent(s) another writ petition being CWJC No. 367 of 2009 was filed by the petitioners-Church. This Court again traced the history of the case and found that in the records of right the subject land was described as “**Kaisrehind**”. After the banishment of the British Rule, the Government of India decided to part with the title of the Church land to the respective Churches. A notification in this regard was issued by the Government of India on 23.03.1948 declaring that henceforth the Church and connected buildings/land(s) attached thereto would be taken care of by the Church authorities concerned. The petitioners-Church finds mentioned in the 1st Schedule of Indian Church Act, 1947. Having appreciated the rival contention, this Court by an order dated 17.01.2012 (Annexure-4) disposed of the writ petition restraining the respondents from interfering with the rights and the possession of the petitioners-Church over the land/property in question. Again the respondents unmindful of those order(s) have made an attempt to create hindrance or obstacles in managing the affairs of the Church and the land attached thereto by including the subject land in the list of the government land (Annexure-5) clamping a ban over registration of any document of conveyance thereto. Under which provision the list has been prepared by the State respondents putting the ban is not known to the Court. It has, however, been submitted that by including the details of the land in the said list, the respondents State has arbitrarily interfered with the right of the Church to manage or deal with the land/property of the Church and hence the writ petition.

I have heard Mr. Rajendra Narayan, Sr. Counsel for the petitioner, A.C to S.C. 30 for the State as also Mr. Aditya Narayan Singh No.1 who appeared in support of I.A. No. 643 of 2015 filed for impleadment as the

respondent with whom the agreement to sale was entered by the petitioners.

The counsel for the petitioners urged that the assets and the property of the Church stands vested in the petitioners-Church by virtue of Churches Act, 1947. During the survey operation, the subject land was recorded in the name of the petitioners-Church which was unsettled in appeal but restored by this Hon'ble Court. The Mounted Military Police (MMP) arbitrarily started encroaching over the subject land of the Church. The interference by the MMP was complained before the State Government. The Bihar Legislative Council took cognizance and the matter was enquired into by a Committee of the Members of the Legislative Council wherein the respondents were restrained from interfering with the right of the Church with respect to the subject land. On two previous occasions this Court considered the case of the petitioners and granted relief against the State respondents. Now the State respondents have devised another method/plan to undo those orders of this Court as well as the order of the Survey Authority by including the subject land of the Church in the list of banned government land putting restriction on the rights of the petitioners to deal with the property. Indisputably, the subject land stands recorded in the name of the petitioners-Church during the survey operation which has remained intact till date. This Court on earlier occasions considered the right and title of the petitioners-Church over the subject land which is part of the Church property which stands vested by virtue of the statutory provisions. No doubt, it was originally a **Kaiserehind** land but the Union of India by virtue of a notification transferred the subject land to the Church which became the owner thereon. In the face of these facts, it is difficult for this Court to uphold the contention of the respondents that the subject land remained



government land merely because in the cadastral survey record the same was entered as **Kaiserhind** land. The **Kaiserehind** land is the land of the government which shall remain as such until the government of India divests its right therefrom by virtue of an order/notification which in the case appears to have been done. Relevant fact in this regard is found from the order dated 29.07.2005 passed in CWJC No. 5906 of 2000 (Annexure-3) as well as the order date 17.01.2012 passed in CWJC No. 367 of 2009 (Annexure-4). In the face of those two orders passed in the previous writ petitions, the State respondents cannot treat the subject land as the land of the Union of India. This Court, in the light of what discussed above, is inclined to hold that the inclusion of the subject land in annexure-5 by the State respondents is an illegal or arbitrary exercise of power. Except reiterating that the subject land originally was recorded as a Kaiserehind land the State respondents have not been able to show any other material that the subject land remained in the hands of the government.

Mr. Aditya Narayan appearing in support of interlocutory application (I. A. No. 643 of 2015) has only prayed for the impleadment of the applicant as the respondent contending that an agreement to sale was reached between the Church and the applicant. Considering the scope of the writ petition, this Court is not required to deal with the said submission of the applicant of the interlocutory application. Presumably, the applicant intends to be impleaded as the respondent to support the case of the petitioners-Church in respect of the subject land which may not be permissible.

The counsel for the petitioners submits that the writ petition also prays for a direction on the respondents not to interfere with the right title and possession of the petitioners-Church save and except in accordance with law.

Taking into consideration the entire facts evidencing from the records and the discussions made hereinabove, the writ application is allowed. The inclusion of the subject land in the list of the banned land of the government (Annexure-5) stands quashed. The State respondents are restrained from interfering with the right title and possession of the petitioners-Church over the subject land save and except in accordance with law.

Party shall bear their own costs(s).

(Kishore Kumar Mandal, J)

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