

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1630 of 2016
IN
Civil Writ Jurisdiction Case No. 3477 of 2008**

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Shri Mahabir Jee Deity, village-Taruhan, P.O.-Turki, P.S.-Kudra, District-Rohtas (Sasaram) through Kamala Kant Upadhyay, son of Mathura Upadhyay, Shebait and Secretary of Sri Mahabir Jee Deity, resident of village-Taruhan, P.O.-Turki, P.S.-Kudra, District-Rohtas (Sasaram)

.... Appellant/s

Versus

1. The State of Bihar
2. The Director, Consolidation, Bihar, Patna.
3. The Deputy Director, Consolidation, Rohtas (Sasaram)
4. Consolidation Officer, Kudra, Rohtas.
5. Biral Hazam, son of Sheo Pujan Hazam, resident of village-Taruha, P.O.-Turki, P.S.-Kudra, District-Rohtas.
6. Radhey Shyam Upadhyay, son of Ramdhar Upadhyay, resident of village-Hasanura, P.O.-Turki, P.S.-Kudra, District-Rohtas (Sasaram)
7. Ram Raj Upadhyay, son of Deo Narain Upadhyay, resident of village-Hasanura, P.O.-Turki, P.S.-Kudra, District-Rohtas (Sasaram).
8. Rajendra Upadhyay, son of Mathura Upadhyay, resident of village-Taruhan, P.O.-Turki, P.S.-Kudra, District-Rohtas (Sasaram).
9. Sheo Pujan Mishra, son of late Laxmi Mishra, resident of village-Babhangawan, P.O.-Dengari, P.S.-Kudra, District-Rohtas (Sasaram).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Radha Mohan Pandey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 20-09-2017

Heard learned counsel for the appellant. Since no



notice has been issued, none of the respondents are present.

2. The appellant is aggrieved by the judgment dated 18.03.2016 passed by the learned Single Judge of this Court in CWJC No.3477 of 2008 by which the learned Single Judge refused to interfere with the order passed by the revisional authority under the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Act, 1956'). The petitioner-appellant before the learned Single Judge challenged the concurrent findings of fact recorded by the appellate as well the revisional authority rejecting the claim of the petitioner-appellant with respect to the land in question as also with respect to the shebaitship. It was the case of the petitioner-appellant that the Bihar State Religious Trust Board had earlier vide order dated 26.05.1988, as contained in Annexure-5 to this writ application, issued a declaration that the trust in question is a public trust and it is not the private property of one Biral Hazam.

3. The learned Single Judge having noticed the submissions on behalf of the petitioner found that the revisional authority has taken into consideration all the issues which were raised on behalf of the parties and by a reasoned and speaking order issues have been decided and because the learned counsel appearing on behalf of the petitioner could not assail the revisional authority on the



ground that it was in violation of the provisions of the Act, 1956 the learned Single Judge held that this Court does not find any good ground to interfere with the revisional order as well as the appellate order, but having noticed that there was no gazette notification under Section 26A of the Act, 1956 closing the consolidation operation in the Mauza in question, the learned Single Judge took a view that once the said consolidation operation comes to an end, the aggrieved party shall be at liberty to approach the civil court of competent jurisdiction for grant of appropriate relief with respect to the lands in question.

4. Before us, in appeal, learned counsel for the petitioner-appellant has mainly relied upon the order passed by the Special Officer, Bihar State Religious Trust Board, as contained in Annexure-5 to the writ application, which is dated 26.05.1988.

5. Submission is that because this order has attained finality having remained unchallenged by the said Biral Hazam it has concluded the relationship and there cannot any finding contrary to this by the revisional authority as well as appellate authority has been done in the present case while exercising their power under the Act, 1956. According to learned counsel, the order as contained in Annexure-5 is appealable order but there being no appeal against the same the order shall be binding upon all concerned. Reliance in this regard has been placed upon a judgment of the Division Bench of this



Court in the case of **Bihar State Board of Religious Trust Vs. Sri Raja Prasad Agrawal & Anr. reported in 2009(2) PLJR 906** and in the case of **Mishri Lal Mahto Vs. The State of Bihar & Ors. reported in 2002(1) PLJR 195**. It is submission of the learned counsel for the appellant that the property is a public trust property or not it could have been decided only by a duly constituted Tribunal under the Bihar State Religious Trust Board Act, therefore, the impugned order passed by the appellate authority and the revisional authority are fit to be set aside.

6. We have considered the submissions made on behalf of the appellant and have also perused the materials available on the record. A perusal of the order passed by the revisional authority would show that the revisional authority took note of the submissions made before it and formulated the issues for consideration. Those are being taken note hereunder for a ready reference:-

“(i) Whether the deeds relating to acquisition of lands are in the nature of endowment/Arpannama or on out right sale deed for consideration?”

“(ii) Whether there is any evidence on the record to show that the temple was a public one at the time when entries were made in the consolidation papers originally or it is a subsequent development?”

“(iii) Whether prior permission under Section 5 is required for a deed relating to appointment of



Sebait?"

7. Thereafter the revisional authority discussed the materials available on the record and recorded the finding as regard the nature of the land on the basis of documents which were before him. He went to the recital of the sale deeds and found that the same are in favour of Shree Mahabir Jee Mandir in which the name of Bishwanath Hajam was shown as Motabali of the deity. Because of this, the revisional authority came to a conclusion that the case of the petitioners that the transfer was in the nature of endowment or donation is not correct. Further the revisional authority with regard to the nature of the land came to a conclusion that the nature of the land cannot be said to be public rather it is a private land. One of the findings which would be very important and would have a bearing upon the submissions of the learned counsel for the appellant is that so far the entry in the Bihar Hindu Religious Trust Board with regard to temple is concerned, the temple is on a different land which was acquired from Chailar Ahir and it measures 2 decimals only. So far the land covered by the sale deeds are concerned, their nature is different and they were never public land rather are private land. In this regard, the revisional authority has also relied upon the decision of the Hon'ble High Court reported in 1978 BBCJ Page-60(DB) and



that of the Hon'ble Supreme Court in the case of Fazhakkal Kuttappu Vs. C. Bhargavi & Ors. reported in AIR 1977 SC 105.

8. We are not in agreement with the submissions made on behalf of the learned counsel for the appellant based entirely on Annexure-5 to the writ application. A perusal of the order dated 26.05.1988 passed by the Special Officer, Bihar State Religious Trust Board, Patna gives a prima facie impression that there was no enquiry held by the Trust Board with regard to the possession which was being claimed by Sri Kamala Kant Upadhyay and only because other party could not appear the claim of Biral Hazam was rejected. We are afraid this Annexure-5 cannot be made basis to claim his right with regard to the land in question because deciding the issue with regard to the nature of the land and ownership thereof could not have been gone into by an authority under the Bihar State Religious Trust Board.

9. In our opinion, the consolidation authorities was the competent authority while consolidation proceeding is going on to look into any objection to file under Section 10(3) of the Act, 1956 and if they had considered the objection which was followed by appeal and revision and a conclusion has been reached by the statutory authorities specifically vested with such jurisdiction, there orders cannot be held to be bad because of Annexure-5 to the writ application.



10. We, therefore, find that the learned Single Judge has correctly given an option to the petitioner-appellant that once the consolidation proceeding is over in the area they will have a liberty to raise all such issues before the civil court of competent jurisdiction.

11. We find no merit in this appeal. The same is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.09.2017
Transmission Date	

