IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7825 of 2015

==

1. Shivaji Singh, S/o Late Shambhu Singh, R/o vill.- Babura, P.S.- Barahra, Dist.- Bhojpur, presently residing at B-203, Jamuna Enclave Aptt., near R.P.S. More (Off-Bailey Road), Patna - 801503.
2. Smt. Rajeshwari Singh. W/o Prof. Babban Singh and D/o Late S.S. Singh. At present residing at Old N.C.C. Office, Near Sadar Hospital, Buxar Civil-lines, Buxar.
3. Smt. Prabha Singh, W/o Late Nagendra Sinha and D/o Late S.S. Singh, Residing at House No. 50, Sardar Patel Path, North S.K. Puri, Patna.
4. Mihir Kumar Singh, S/o Late Poonam Singh & Late C.K. Singh and Grand son of Late S.S. Singh, presently residing at 50, Sardar Patel Path, North S.K. Puri, Patna.
5. Mrs. Shalini Singh, D/o Late Poonam Singh & Late C.K. Singh and Grand Daughter of Late S.S. Singh. Presently at Mohalla - Prabhu Nath Nagar C/o Sri C.S.P. Singh (Retd. P.V.P.), Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Patna.
2. The B.S.B.H. Religious Trust, through the Chairman at Vidyapati Marg, Patna - 800001.
3. The Dy. Collector, Land Reforms, Patna Collectorate, Patna.
4. The C.O.-cum- Prakhand Vikas Padadhikari, Phulwarishariff, Patna.
5. The so called 'Udasin Nanakshahi Sangat' at Phulwarishariff through its Secretary Sri Devendra Prasad, Son of Late Ambika Prasad, Phulwarisharif, Patna cum P.V.P. Phulwarisharif, Patna.
6. The Prakhand Vikash Padadhikari -cum- P.I.O., Phulwarisharif, Patna.

.... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Raj Kishore Prasad Singh, Adv. Mr. Jagdish Prasad Bhagat, Adv.
For the Respondent/s	:	Mr. Arun Kumar, AC to GP-1
For the Respondent No.2	:	Mr. Shekhar Singh, Adv.

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-02-2017

Heard Mr. Raj Kishore Prasad Singh, learned counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Shekhar Singh, learned counsel appearing for the Bihar State Religious Trust Board.

The petitioners are aggrieved by the order dated

11.6.2011 of the Chairman, Bihar State Religious Trust Board, Patna (hereinafter referred to as 'the Board'), whereby in consideration of the claim raised by the petitioners in context with 55 decimals of land bearing Khata No.805, Plot No. 703, Thana No.35, Mauza- Phulwarisharif, the right, title and ownership of which is being claimed by the petitioners and which part of the land according to the petitioners, has been registered as the trust property of the Respondent no.5, the Udasin Nanakshahi Sangat, Phulwarisharif in the district of Patna, the Chairman of 'the Board' has advised the petitioners to raise their grievance before the Tribunal constituted under section 43 of the Bihar Hindu Religious Trust Act, 1950 (hereinafter referred to as 'the Act') and 'the Rules' framed thereunder.

According to Mr. Raj Kishore Prasad Singh, learned counsel appearing for the petitioners, the respondent no.5 is a fake trust and the action of 'the Board' in granting it recognition as well as its action in registering the plots in so far as it includes even such area which belongs to the petitioners bearing Plot No.703 of Khata No.805, Thana No.35 admeasuring 55 decimals which is equivalent to 18 Kathas, is an illegal act. He submits that it is questioning such action of 'the Board' to include the private land of the petitioners treating it to be the property of the respondent no.5 that the petitioners filed an application before the Administrator raising objection thereto, a copy of which is placed at Annexure-11 and when the matter was not being disposed of that they came before this Court in CWJC No.13003 of 2009 which was disposed of on 16.11.2009 with a direction to the Chairman of 'the Board' to dispose of the same within three months of the production of a copy of the order, a copy of which is placed at Annexure-12. He submits that although the Chairman has thereafter disposed of the matter but in so far as the issue in contest is concerned he has abdicated his responsibility by relegating the petitioners to the forum available under section 43 of 'the Act' when the provisions of section 43A of 'the Act' would not cover the private individuals. He thus submits that in the circumstances, the order of the Chairman is not sustainable.

The argument of Mr. Singh is contested by Mr. Shekhar Singh and who in reference to section 43B of 'the Act' has submitted that there is no such exclusion of private individual in raising their claim against inclusion of their private property as a trust property.

I have heard learned counsel for the parties and I have perused the records.

The order impugned is enclosed at Annexure-13 and the Chairman in consideration of the matter in contest has framed four issues which stands noted at running page 83. Although item nos.(क) and (ख) relate to the eligibility of private respondent no.5 for its registration as public trust and has been questioned by Mr. Raj Kishore Prasad Singh on grounds that it is fake but in my opinion, this is an issue entirely reserved for 'the Board' who is the appropriate body to consider whether or not any body is fit to be registered under the provisions of 'the Act' and whether it confirms to the requirement. In fact in my opinion, Mr. Raj Kishore Prasad Singh, learned counsel for the petitioners is travelling beyond the relief prayed herein to question the very registration of the respondent no.5 as a religious trust. A cursory glance to the grievance raised would show that his grievance is limited to the inclusion of a portion of land which admeasures 55 decimals of Plot No.703 of Khata No.805 as trust property and thus the issue is whether this portion of the land has been wrongly included in the trust property or not or whether in fact the land in question belongs to the trust.

The finding on this issue stands recorded by the Chairman at running page 88 which prima-facie appears to be favouring the petitioners but the Chairman realizing his jurisdiction to opine in such matters in view of the provisions underlying section 43B of 'the Act' has rightly refrained from expressing any opinion in such matters. There is thus no abdication of duty by the Chairman as advanced by the petitioners and who has simply advised the petitioners to seek their remedy before the Tribunal which, in my opinion, is legally supported.

Mr. Singh, learned counsel for the petitioners next attempts to interpret section 43A of 'the Act' to submit that it would not include the 'private individual(s)'. In fact the legislative intent of section 43A when read alongside section 43B, of 'the Act' would include all individuals who seek to comment upon the affairs of the trust in the matter of encroachment and for seeking restoration of their land wrongly included as trust property. Section 43A (1) and section 43B of 'the Act' reads as under:

> "**43A. Procedure for filing an application: - (1)** Either the Board or with the permission of the Board, any religious trust or any two persons, interested in the affairs of a particular trust, may file an application with the Tribunal for the recovery of the alienated property or for the removal of encroachment or for the decision on the property disputes referred to it under any provision of the Act.
>
> Provided that if the Board fails to take a decision on the permission within eight weeks from the receipt of the application, the permission will be deemed to have been granted.
>
> …. ….. …… …..
> …. ….. …… ….."
>
> "**43B. Decision of property disputes.-** The Tribunal shall decide the following property disputes-
>
> (i) Whether any immovable property is or is not a property of a particular trust.
>
> (ii) Whether any particular property claimed by the Mahanth, Shebait, priest or a trustee is his personal property or the property of the temple or math.
>
> …. ….. …… …..
> …. ….. …… ….."

The provisions above quoted, while granting liberty to 'the Board' or with the permission of the Board, any religious trust also confers right on any two persons interested in the 'affairs of the trust' to raise question on the functioning of a trust. This expression is being given a narrow interpretation by Mr. Singh to confine it only to such persons who have come forward to espouse the interest of the trust. The term 'interested' used in the provision cannot be given a limited interpretation to only include person(s) who wish to promote interest of a particular trust rather it would equally vest such persons with a right to question the affairs of the trust and which expression is qualified when the provisions grants liberty to such person to make application for recovery of the alienated property which stands included in the trust property or for removal of encroachment from trust property.

In my opinion, in view of such clear stipulations present in 'the Act', the submission made by Mr. Raj Kishore Prasad Singh to limit its operation only to such of the persons who seek to espouse the interest of the trust, is not in tune with the legislative intent. In fact now that the permission has already been granted by 'the Board' to the petitioners to raise their grievance as required under section 43A of 'the Act', the petitioners are free to take recourse to the remedy as available to them under section 43B of 'the Act' which clearly vests jurisdiction in the Tribunal to consider the grievance raised by any applicant under section 43A of ‘the Act’ and to opine whether or not any immovable property is a trust property.

The field clearly available to the petitioners, the present writ petition is an attempt to bypass the same, no cause for indulgence is made.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04-03-2017
Transmission Date	NA