

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12804 of 2015

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1. Shri Ram Ji and Shri Janki Ji Temple, Village- Gadhiya, P.O.- Bithuaar, P.S.- Pandaul, District- Madhubani through its savait Vinod Kumar Chaudhary resident of village- Bithuaara, P.S.- Madhubani, District- Madhubani.
2. Vinod Kumar Chaudhary, son of Late Chandar Shekhar Chaudhary, resident of village- Bithuaara, P.S.- Madhubani, District- Madhubani. Sevait of Shri Ram Ji And Shri Janki Ji Temple, Village- Gadhiya, P.S.- Pandaul, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Bihar State Board of Religious Trust, through its President Vidyapati Marg, Patna-1.
3. The President, the Bihar State Board of Religious Trust, Vidyapati Marg, Patna-1.
4. The District Magistrate of Madhubani.
5. The Sub Divisional Officer, Sadar, Madhubani.
6. The Circle Officer, Pandaul, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. V. N. P. Sinha, Sr. Advocate with
Mr. Yugal Kishore, Advocates

For the Respondents No. 2 and 3 : Mr. Ganpati Trivedi, Sr. Advocate with
Mr. Madan Mohan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 21-08-2017

Heard learned counsel for the petitioners, State and respondents no. 2 and 3.



2. The petitioners have moved the Court for the following reliefs:

“ That this is an application for issuance of a writ in the nature of certiorari or an appropriate writ or order or direction for quashing the memo no. 1672 dated 02.03.2015 by which respondent no. 3 issued direction to respondent no. 4 and 6 (Annexure-7) to make enquiry over land in question (i.e. Khata no. 317, Khesra no. 1015/1264) and also directed to stop sell of the land and to vacate encroachment over the land and then letter dated 2/3/15 issued under the signature of respondent no. 3 address to respondent no. 6 (Annexure-8) to select the name of 11 people for constitution of the committee for management of Shri Ram Ji and Shri. Janki Ji temple (petitioner no. 1) and also for quashing memo no. 921, dated 14/7/15 (Annexure-9) issued to the petitioner by the respondent no. 6 for participation in meeting for selecting of 11 people as per the direction given in Annexure-8 and also to quash the order dealing the trust of the petitioner as public trust even without any notice or information to the petitioner and even without hearing him and private trust created by the ancestor of the petitioner no. 2, have been declared as Public trust and/or pass any other order/orders as your lordships may deem fit and proper in the facts and circumstances of the case.”

3. At the very outset, learned counsel for the respondents



no. 2 and 3 raised a preliminary objection and submitted that the dispute raised in the present writ application can be adjudicated under Section 28 (2) (u) of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as the 'Act'). He submitted that the petitioners having an equally efficacious and alternate remedy, the Writ Court may not interfere at this stage.

4. Learned counsel for the petitioners submitted that the impugned order presumes that it is a public trust but there being no formal order adjudicating whether it is a public trust or private trust, the same could not have been passed by the respondent no. 3.

5. Having considered the matter, the Court finds substance in the submissions of learned counsel for the respondents no. 2 and 3. The fact of there being a Trust is not in dispute. Once the same is not disputed, if, even erroneously, respondents no. 2 and 3 have held that it is a public trust and have acted thereupon, without there being any specific order as to whether it is a public trust or private trust, it shall be, in the opinion of the Court, the party which is aggrieved, which is required to move under Section 28 (2) (u) of the Act. Thus, there being no specific order of any competent authority/court to hold that the trust in question is a private trust, though the fact of there being a Trust being admitted, it shall be the party, who is aggrieved by any order which, if it relates to a dispute that the Trust is private and not



public, has to move under the Act for adjudication on the said issue. As there is already a provision under the Act for adjudication of such issue, it shall be open to the petitioners to invoke the said provision of the Act in the present matter.

6. The Court is fortified by the view taken by a Division Bench of this Court in the case of **Bihar Religious Trust Board V. Mahanth Jaleswar Gir etc.** reported as **1968 PLJR 507**, though rendered prior to the amendment inserting Section 28 (2) (u) of the Act, having laid down the principle.

7. In view of the aforesaid, the writ petition stands disposed off with liberty to the petitioners to move before the respondent no. 2 in the matter of getting a finding with regard to the Trust in question being private and not public.

8. If such an application is filed within two months from today, the same shall be considered on merits and disposed off, expeditiously, within three months from its filing.

(Ahsanuddin Amanullah, J)

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