

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6836 of 2014

=====

1. M/s Asterisk Home Pvt. Ltd. through it's director Sri Santosh Kumar Sinha son of Late K.K. Prasad resident of A/338, A.G. Colony, P.O. - Ashiyana Nagar, P.S. Shastri Nagar, Dist. - Patna , Pin Code - 800025.

2. Rakesh Kumar Bhatt, Advocate son of Late Rameshwar Prasad Bhatt Village - Haripur, P.O. - Selakui, District - Dehradun, State - Uttaranchal, present address - C/o Late Gopal Das, Mohalla - Sheikhpura, Shastrinagar, P.S. - Shastrinagar, District - Patna.

.... Petitioners

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.

2. The Bihar State Hindu Religious Trust Board through its President, Vidyapati Marg, Patna.

3. The Mahavir Mandir Nyas Samiti @ Sri Mahavir Sthan Nyas Samiti, Patna Junction Hanuman Mandir Patna.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Gajendra Pratap Singh, Advocate
Mr. Shekhar Singh, Advocate

For the Respondent-State : Mr. Tripurari Nath Ambastha, AC to SC-26

For the Respondent No.3 : Mr. Sanjeev Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-03-2018

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



2. This writ petition has been filed by the petitioners, assailing the validity of budgetary allocation passed under the rules of business, which has been approved by the Bihar State Hindu Religious Trust Board and Mahavir Mandir Nyas Samiti.

3. The contention of the petitioners is that Mahavir Mandir Nyas Samiti (for short 'Samiti') cannot make any budgetary allocation in the name of fictional trust going by the name of Ram Janki Hanuman Mandir, Shiekhpora, Patna (for short 'Mandir'). The budgetary allocation passed in the financial year 2014-15 to the Mandir, by the Samiti is in contravention of rules of executive business. It has affected the right of the petitioners. The impugned action of the respondents would be in contravention of Section 60 of the Bihar State Hindu Religious Trust Act, 1960 (for short 'the Act'), as also the principle of natural justice. The petitioner further contends that the respondents are contesting Case No.9 of 2009 before the Bihar State Hindu Religious Tribunal (for short 'Tribunal') with regard to the property in question, which is still sub-judice for the purpose of determination of nature whether it is a private property or property of a particular trust and, during pendency of the aforestated Case No.9 of 2009, the budgetary allocation made by the Samiti is wholly illegal and unsustainable because the respondents are trying to enforce a case of illegal



presumption before the Tribunal regarding their bona fide claim in the property in question.

4. *Per contra*, learned counsel appearing for respondent no.3 Samiti submitted that this writ petition is not maintainable in view of the fact that the petitioners have sought reliefs by invoking extraordinary writ jurisdiction against the Samiti, a trust, which is not State within the meaning of Article 12 of the Constitution of India. If the petitioners have any grievance, they may file a suit or raise his grievance before the Tribunal where a dispute between the same parties is pending vide Case No.9 of 2009.

5. Mr. Ganpati Trivedi, learned Senior Counsel for the respondent no.2 submitted that since the adjudication with respect to the property in question is sub-judice in the Tribunal, hence the Tribunal has its jurisdiction to appreciate evidence to be led before it and pass order in accordance with law.

6. The facts of the case of the petitioners have been taken note of by this Court in earlier round of litigation in C.W.J.C. No.1437 of 2012 in its order dated 24.04.2012, which are as under:-

“Petitioner no. 1 is the builder, who entered into the development agreement with Late Ram Gopal Das, whereas petitioner no. 2 claims to be the only legal heir of Late Ram Gopal Das.

The short facts of this case are that there is



a temple in the Station Road, run by MAHAVIR MANDIR NYAS SAMITI. The case of the petitioner is that the Mahant Bhagwan Das purchased the property measuring 7 kathas 11 dhurs in the year 1960 out of his own personal funds. Mahant Bhagwan Das died in the year 1987 and thereafter his Chela Ram Gopal Das got his name mutated in the Municipal Corporation in the year 1994. There were several shops on the lands which were on lease. The Registrar refused to register the lease and as such, he challenged the action of the Registrar by filing a writ application.

A counter affidavit was filed in which it was stated that the petitioner has not presented any documents for registration. The writ application was dismissed with an observation that in future if the petitioner presents any document for registration of a lease deed, it should be considered in accordance with law. Thereafter, one Dr. Arun Kumar Singh filed CWJC No. 8874 of 2010 being aggrieved by the order of the District Sub-Registrar refusing to register the title deed of the lands purchased by him. The said registration was refused on the ground that the lands were declared as part of a public trust. Ultimately, the case was allowed and two sale deeds with respect to 1 katha 19 dhurs and 5 kathas 12 dhurs were registered.

On behalf of the Religious Trust Board, it has been argued that there was a dispute regarding



the question of title as well as the question as to who was the Mahant of the said Trust. Subsequently, the refusal of the District Sub-Registrar was set aside by this Court on 29.11.2010 (Annexure-5). After that, lease executed was annulled for one reason or the other, which this Court need not go into for the purposes of deciding the limited issues in this case.

The petitioner no. 1 entered into an agreement with Ram Gopal Das for developing the lands in question. 45 per cent of the developed premises were to remain with Ram Gopal Das and the rest was to remain with the petitioner. The said agreement was registered on 08.10.2011. On 14.09.2009, one Mahendra Das was appointed as the Mahant of SRI HANUMANJI AND RAM JANAKI MANDIR, Bailey Road, Sheikhpura. The appointment of Mahendra Das as a Mahant was challenged by filing CWJC NO. 1509 of 2010, which was disposed of on 25.04.2011 (Annexure-2). The said order would reveal that the matter was remanded back to the Board for deciding the issues in question within a period of two months. In the said writ application, it has been noticed by the Board that a proceeding is pending before the Tribunal under Section 48B (ii) of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as the Act).

The case of the Board is that Ram Gopal Das was not the Mahant of the MAHAVIR



MANDIR. It is also their case that the lands in question are part & parcel of the Mandir, which is a public trust. The matter for deciding the issues under Section 28 (2) (u) of the Act was remanded back by this Court on 25.04.2011. Notices were issued to Ram Gopal Das who absented himself from the proceedings. Finally, on the basis of the documents available before it, the Board has decided the matter under Section 28 (2) (u) of the Act vide Annexure-1 ”.

7. In C.W.J.C. No.1437 of 2012, the declaration made by the Board that the property in question is a religious trust was assailed by the petitioners. After hearing the parties in the said writ petition, this Court declined to interfere with the prima facie view held by the Board that the trust is a public trust. While saying so, the Court observed:-

“Referring to the order as contained in Annexue-1, it would appear that the Board was very much aware of the fact that the dispute with respect to the nature of the property was pending before the Tribunal and therefore, has specifically stated that in the process of deciding that the trust is a public trust or a private one, they have come to a incidental finding with respect to the nature of the property, which is not the final word and would obviously be subject to the decision of the Tribunal.



This Court agrees that prima facie view held by the Board, but clarifies the order to this extent, that the findings are only incidental and cannot be binding on the Tribunal and will not be treated as res judicata on the point regarding the nature of the property. This is the law as laid down by the Division Bench in the case of Bihar Religious Trust Board vs. Mahanth Jaileshwar [1968 PLJR 507]”.

8. Being aggrieved by the aforesaid order passed in C.W.J.C. No.1437 of 2012, the petitioners filed intra court appeal vide L.P.A. No.1406 of 2012, which was disposed of on 01.10.2012. While disposing of the Letters Patent Appeal, the Division Bench observed:-

“Having heard submissions of both the parties, we are of the view that the clarification made by the writ court, in practical terms, takes care of the grievance raised by the appellants. It is, however, further clarified that the order contained in annexure-1 which was under challenge before the writ court shall not be treated to have any effect upon title or nature of the land involved and shall not bind the appellants”.

9. The Division Bench further observed:-

“It is made clear that title in respect of the



disputed property and whether its nature was that of a trust property or individual property shall be governed by the decision of the Tribunal where the matter is said to be pending.”

10. Thus, it would be manifest that neither the single Judge nor the Division Bench interfered with the finding of the Board that the property in dispute is a religious trust property.

11. The case of the petitioners is that being a builder, petitioner no. 1 has entered into a registered deed of agreement with Ram Gopal Das, who subsequently died on 09.02.2011. The said Ram Gopal Das was a party in the proceeding under Section 28(2)(u) of the Act. The contention of the petitioners is that the order passed by the Board under Section 28(2)(u) of the Act was an ex parte order.

12. In the opinion of this Court, the same would make no difference, as ex parte order is as much binding as any other order until it is set aside. It is an admitted position that the adjudication with respect to the property in question is sub-judice before the Tribunal. Hence, the Tribunal has its jurisdiction to appreciate the evidences which may be led before it and pass appropriate order after considering the claims of the parties. As for now, since the property is under the supervision of the Board, hence,



the Board has every authority to exercise its statutory power and the contention of the petitioners that the Samiti cannot make any budgetary allocation in the name of fictional trust is without any merit.

13. Accordingly, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2018
Transmission Date	NA

