

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4060 of 2014

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Sri Durga Prasad Thakurbari Trust, House No.52/56, Ward No.0.3, K.P. Road, P.S. Kotwali, District Gaya through its Member/Trustee Ratan Lal Gupta son of Late Nawal Kishore Prasad, resident of Rang Bahadur Road, Tel Bigha, P.S.-Kotwali, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Gaya
2. The Bihar State Board of Religious Trust, Vidya Pati Marg, Patna through its Chairman
3. The Chairman, Bihar State Board of Religious Trust, Vidya Pati Marg, Patna
4. Assistant Superintendent, Bihar State Board of Religious Trust, Vidya Pati Marg, Patna

.... Respondent/s

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Appearance :

For The Petitioner : Mr. Sanjeev Kumar, Advocate
For The State : Mr. Rohitabh Das, A.C. to A.G.-10
For the Board/Trust : Mr. Shekhar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-04-2018

In the instant writ petition, the petitioner seeks quashing of the resolution dated 02.09.2013 passed by the respondent no.3 and communicated to the petitioner by respondent no.4 by which a private trust in question i.e., Sri Durga Prasad Thakurbari Trust has been held to be a public religious trust.

2. Mr. Sanjeev Kumar, learned counsel for the petitioner submitted that Sri Durga Prasad Thakurbari Trust (for short 'Trust') was established by Sri Durga Prasad and his wife Parwati Kuer jointly in one of the rooms of their residential house. The said residential



house is situated upon their own private land and not upon any public land. After the death of said Sri Durga Prasad, his widow Most. Parwati Kuer executed a will on 09.11.1990 by which she dedicated some property to become trust property and the trustees appointed by her were made entitled to manage the trust properties and affairs and religious ceremonies attached to the deities. Sri Durga Prasad and Parwati Kuer were issueless. As per the will, the trustees were entitled to manage the properties and no right was conferred upon them to affect transfer of the trust properties in any manner. It was stipulated in the will that in case of death of any of the trustees, the remaining trustees would be entitled to fill up the vacant post by selecting other persons of Vaishnav cult.

3. He submitted that in due course of time the trustees appointed by Most. Parwati Kuer also died and after their death the descendants of the dedicator had selected certain persons in their place. He contended that either during life time of Most Parwati Kuer or after her demise no outsider except the trustees appointed by her ever managed the affairs of the Trust and no person ever participated in the meeting of the trustees. Subsequently, the Bihar State Board of Religious Trust (for short 'the Board') vide notice dated 03.07.2007 asked the trustees to submit their show cause as to why the present committee be not scrapped and alternative arrangements be made. The



then trustees in compliance of the notice dated 03.07.2007 filed their show cause reply within the stipulated time. Subsequently, vide memo no.843 dated 07.08.2012 the respondent no.2 issued a notification declaring the Trust as public religious trust and appointed trustees and fixed a tenure of the newly appointed trustees for a period of three years.

4. Being aggrieved the petitioner moved before this Court in C.W.J.C. No.17420 of 2012 challenging the order dated 07.08.2012 which was disposed of by this Court on 19.09.2012 with liberty to the petitioner to approach the President of the Board and submit before him that the petitioners were not given opportunity of hearing to the effect that endowment is a private endowment in the light of the provisions made in the will. Thereafter, the petitioner along with other trustees filed a petition before the respondent Board which was heard on 02.09.2013 by which though the order dated 07.08.2012 was quashed, in the concluding portion it has been held that a mutual agreement was made between the parties and it was consented that the said endowment is a public endowment and it was held that all the work will be carried by treating the said trust as public trust.

5. Assailing the afore-stated order dated 02.09.2013, learned counsel for the petitioner submitted that the order is not only bad but also perverse as the petitioner and other trustees have never



made any agreement either oral or written to that effect nor have they given any consent to any body that the said trust be treated as public trust and, as such, the order impugned is absolutely bad and illegal. He submitted that never before in the past the Bihar State Religious Trust Board (for short 'Board') made any interference with the affairs, working and management of the Trust nor rendered any financial assistance to the Thakurbari. The expenditure in Rag-Bhog, Utsav and other works has always been met by the Trust. According to him the respondent no.2 has not taken any care of will of Most. Parwati Kuer, in which, she had made arrangement of five members as trustees, but respondent no.2 has constituted a trust of seven members in complete violation to the will of Most. Prawati Kuer. He submitted that since the respondent no.2 has come to an erroneous finding, the impugned order is required to be set aside.

6. On the other hand, learned counsel for the State raised a preliminary objection regarding maintainability of the writ petition. He submitted that the petitioner has an equally efficacious statutory remedy against the order impugned before a competent court i.e., the Court of District Judge under Section 28(2)(u) of the Bihar Hindu Religious Act (for short 'the Act'). In support of his submission, he has placed reliance on a Division Bench Judgment of this Court in **Bihar State Board of Religious Trust, Vidyapati Marg, Patna vs.**



Sri Raja Prasad Agrawal [2009(2) PLJR 906].

7. Learned counsel appearing for the respondent Board while supporting the contention of the learned counsel for the State submitted that the question whether a trust is a public trust or a private trust is a mixed question of law and fact. In a proceeding under Articles 226 and 227 of the Constitution, such question cannot be properly decided. He submitted that by the impugned order dated 02.09.2013, the trust in question has been held to be a public trust by the Board, which is empowered to decide the above dispute as to whether a trust is a public trust or a private trust and the decision of the Board would remain in force until it is set aside by the competent court.

8. I have heard learned counsel for the parties and perused the record.

9. Section 2(l) of the Act defines the ‘religious trust’ which reads as under:-

“2(l). “religious trust” means and shall be deemed always to mean any express or constructive trust created or existing for any purpose recognized by Hindu Law to be religious, pious or charitable, but shall not include a trust created according to the Sikh religion or purely for the benefit of the Sikh community and a private endowment



created for the worship of a family idol in which public are not interested and where public offerings and donations are not received.”

10. Section 2(p) of the Act defines the ‘trust property’ which reads as under:-

“**2(p).** “trust property” means the property appertaining to a religious trust.”

11. Section 28 of the Act provides for general powers and duties of the Religious Trust Board. Clause (u) of sub section (2) of Section 28 empowers the Board to decide all disputes whether any trust is a public or a private trust in accordance with the definition under Section 2(1) of the Act.

12. In **Bihar State Board of Religious Trust, Vidyapati Marg, Patna vs. Sri Raja Prasad Agrawal (supra)**, on which reliance has been placed by the respondents, a Division Bench of this Court has held as under:-

“13. As a matter of fact, as noticed above, the question in the writ petition did not relate to adjudication of property disputes, but the question related to subject trust having been held as a public trust, although the petitioners claimed that the said trust is a private trust. If the petitioners are aggrieved by the said



decision of the Religious Trust Board, as noticed above, in view of the provisions contained in Section 28(2) (u), they have to approach the competent court and have such decision annulled if they are able to prove that the trust is not a public trust. In other words, the legality and correctness of the resolution dated 07th August, 2004 is needed to be challenged by the petitioners by approaching competent civil court as provided in Section 28(2) (u) of the Act, 1950 itself.”

13. Learned counsel for the Board has rightly submitted that the question whether a trust is a public trust or a private trust is a mixed question of law and fact and the elaborate evidence both oral and documentary will have to be adduced by the parties before a court can give a decision on the same. It is, thus, obvious that in a proceeding under Articles 226 and 227 of the Constitution such question cannot be properly decided.

14. Since the Board has already decided the trust to be public trust in view of the binding precedent as also in view of the statutory provisions prescribed under Section 28(2)(u) of the Act, I am not inclined to entertain the instant application filed under Article 226 of the Constitution of India for setting aside the part of the resolution



dated 02.09.2013 passed by the respondent no.2 whereby the trust in question has been held to be a public trust.

15. The application is dismissed, accordingly.

16. However, the petitioner would be at liberty to approach the competent civil court in terms of Section 28(2)(u) of the Act for setting aside the impugned resolution dated 2nd September, 2013.

(Ashwani Kumar Singh, J)

Md.S./-

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