

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1474 of 2016

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Mahanth Ramcharitra Das, Chella of Late Mahanth Ram Khellawan Das Sewait of
Kabir Panthi Math, Phuhiya, P.O- Sohma, P.S.- Bithan, District- Samastipur.

.... Petitioner

Versus

1. Bihar State Board of Religious Trust through Superintendent, Vidyapati Marg, Patna-1.
2. President, Bihar State Board of Religious Trust, Vidyapati Marg, Patna- 1.
3. Assistant Superintendent, Bihar State Board of Religious trust, Vidyapati Marg, Patna-1.
4. Sri Dharam Das @ Dharam Das Paswan S/O Shankar Paswan, Resident of Village- Nima, P.O- Chandpura, P.S.- Nima Chandpura, District- Begusarai, At present alleged temporary Trustee cum Mahanth of Kabir Panthi Math, Phihia, P.O.- Sohma, P.S.- Bithan, District- Samastipur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Arbind Kumar Singh, Advocate
For BSBRT	:	Mr. Ganpati Trivedi, Sr. Advocate
		Mr. Madan Mohan, Advocate
For respondent no. 4	:	Mr. Bashishtha Narayan Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-08-2018

Heard learned counsel for the petitioner, learned counsel
for Bihar State Board of Religious Trust and learned counsel for
respondent no. 4.

2. This writ petition has been filed by the petitioner for
quashing the order dated 20.11.2015 issued under Memo No. 285,



dated 09.12.2015 passed by respondent no. 2, President, Bihar State Board of Religious Trust (for short 'the Board') whereby and whereunder respondent no. 4 has been appointed as temporary trustee of Kabir Panthi Math, Phuhia (for short 'the Math').

3. Learned counsel for the petitioner submitted that the appointment of respondent no. 4 vide order dated 20.11.2015 is bad in law as respondent no. 2 while passing the impugned order had completely ignored the fact that the petitioner was Sewait-cum-Mahanth of the Math. He contended that the Math had been established by late Guru Kamal Das Ji in 1907 and, thereafter, in the year 1932, late Mahanth Prayag Das being the senior most *Chela* of late Mahanth Kamal Das Ji had been appointed as Sewait-cum-Mahanth of the Math. Subsequently, late Mahanth Naimo Das Ji had been appointed as Sewait-cum-Mahanth in the year 1952 and, thereafter, late Mahanth Ramkhelawan Das Ji succeeded and appointed as Mahanth-cum-Sewait and remained as such till 23.04.2011. The petitioner being influenced with the sect became disciple of late Mahanth Ram Khelawan Das Ji and said Guru being pleased with devotion, dedication and character of the petitioner appointed him as Sewait-cum-Mahanth by executing registered deed of Sewaitnama dated 03.03.2010 and, accordingly, he has been appointed as Mahanth of the Math. Since Mahanth Ramkhelawan



Das Ji died on 03.11.2011 and the petitioner being nominated *Chela* and Mahanth performed all rites and rituals, he has been confirmed and accepted as Mahanth by the devotees of the sect on 25.07.2012. Thereafter, he sent an application through registered post on 22.09.2012 to respondent no. 2 for registration/mutation of his name as Mahanth and the trustee of the Math stating all necessary facts. However, in the most illegal manner, an order was passed vide memo no. 1306 dated 26.09.2012 by respondent no. 2 appointing respondent no. 4 as temporary trustee under Section 33 of the Bihar Hindu Religious Trust Act (for short 'the Act'). He contended that under Section 33 of the Act, the Board could have appointed a temporary trustee only if a vacancy in the office of trustee would have arisen. Since there was neither any dispute nor any vacancy in the office of trustee as the petitioner had been appointed as Sewait-cum-Mahanth by a valid and legal registered deed of Sewaitnama, there was no occasion for respondent no. 2 to have exercised the power vested in him under Section 33 of the Act.

4. *Per contra*, Mr. Ganpati Trivedi, learned senior advocate appearing for the Board while referring to the contentions made in the counter-affidavit submitted that the Math in question was registered as religious trust under Section 34 of the Act by the order of the President of the Board on 07.09.2012 and was allotted



registration no. 4204. The registration of the trust was subsequently confirmed in the meeting of Registration Committee of the Board held on 08.01.2013. He contended that admittedly, Ram Khelawan Das was the Mahanth of the Math who had succeeded the Mahanthship on death of Mahanth Naimo Das. After death of Mahanth Ram Khelawan Das, respondent no. 4 filed an application before the Board on 08.08.2012 laying his claim for being appointed as Mahanth of the Math on the ground that a vacancy had arisen due to death of Mahanth Ram Khelawan Das on 23.04.2011 and he being his senior most disciple was appointed as Mahanth during the lifetime of Mahanth of the Math on 01.01.2004 on the basis of Sewaitnama executed in his favour. After death of Mahanth Ram Khelawan Das, he was coronated as Mahanth of the Math and Chadar Pagadi was given to him by Mahanths and Sadhus of the sect and Bhandara was also held on occasion of Chadar Pagadi. Since there was no claim of Mahanthship for the Math, the respondent no. 4 was appointed as temporary trustee of the Math for a period of one year in exercise of powers under Section 33 of the Act vide order dated 26.09.2012 on condition that he should be unmarried and if any other claimant for Mahanthship turns up, the decision of Mahanthship on permanent basis would be taken after hearing him as well as rival claims on the basis of documents produced by the



parties. The petitioner laid his claim of Mahanthship by filing an application before the Board on 10.07.2013 on the basis of Sewaitnama dated 03.03.2010 said to have been executed in his favour by his Guru Mahanth Ram Khelawan Das. Pursuant to the direction of the President of the Board dated 28.09.2013, the Anchal Adhikari concerned was directed to submit a report. Subsequently, the petitioner filed an application on 21.01.2014 for accepting him as Mahanth and removing respondent no. 4 from Mahanthship as he was a married person having issues out of the said nuptial bond. In view of the rival claims and also keeping in view his previous order dated 26.09.2012, the President of the Board issued notices to the petitioner as well as respondent no. 4 for hearing on the issue of Mahanthship and directed to produce documents in support of their respective claims. Since one year had expired from the date of appointment of respondent no. 4 as temporary trustee, it was held that there was vacancy in the Math as there was no legally appointed Mahanth in the Math. Thereafter, in view of the agreement arrived at during the course of hearing on 26.06.2015, the President of the Board directed the Inspector of the Board to enquire as to who is in possession of the Math and whether Dharm Das is unmarried since childhood. Pursuant to the direction of the President, enquiry was held by the Inspector of the Board on 25.08.2015 in presence of the



petitioner, respondent no. 4 as well as villagers and persons present at the Math. After examining several persons, the report was submitted by the Inspector of the Board. Thereafter, notices were issued to the parties and after giving an opportunity of hearing to the parties concerned, the Board vide impugned order recognized respondent no. 4 as Mahanth of the Math.

5. Learned counsel for respondent no. 4 while adopting the submissions made on behalf of the Board submitted that registered deed of Sewaitnama dated 03.03.2010 on which reliance is being placed by the petitioner is a forged, fabricated and manufactured document which was brought first time before this Court and it was never shown before any authority under law nor on the basis of the same, the petitioner made any claim before the Religious Trust Board for his Mahanthship for filing return. He has also raised objection on the maintainability of the writ petition. He contended that for the grievance raised in the instant writ petition, the petitioner has got remedy before the civil court under Section 48 of the Act.

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

7. There is no dispute regarding the fact that one Ramkhelawan Das was the Mahanth of the Math in question, who died on 23.04.2011. There is also no dispute to the fact that vide



order dated 26.09.2012 respondent no. 4 was appointed temporary trustee of the Math for one year. The dispute between the petitioner and respondent no. 4 has arisen only after the death of Ramkhelawan Das. Both the petitioner and respondent no. 4 are claiming to be successor of late Mahanth Ramkhelawan Das. It would be manifest from the pleading of the parties that prior to the application filed by respondent no. 4 on 08.08.2012 claiming himself to be duly appointed as Mahanth of the Math there was no communication to the Board regarding any dispute. The petitioner filed his claim for the first time on 10.07.2013. Hence, it can not be accepted that after death of Ram Khelawan Das, there was no vacancy as also the fact that in exercise of powers under Section 33 of the Act, the President of the Board had appointed respondent no. 4 as temporary trustee for a period of one year on the condition that he should be unmarried. The claim of the petitioner is based on a registered deed dated 03.03.2010. He had also made complain that respondent no. 4 was married and was thus unfit to be Mahanth of the Math. However, on enquiry, it was found that respondent no. 4 was unmarried. The claim of respondent no. 4 is based on the fact that he was appointed as Mahanth during lifetime of Ramkhelawan Das on 01.01.2004 on the basis of Sewaitnama executed in his favour and after his death, he was coronated as Mahanth and Chadar Pagadi was given to him



by Mahanths and Sadhus of the sect and Bhandara was also held on the occasion of Chadar Pagadi. In view of the rival claims of the parties, on expiry of temporary appointment of respondent no. 4 as trustee, the Board on the basis of inquiry having been conducted and the documents and photographs having been produced by respondent no. 4 accepted him to be the Mahanth of the Math.

8. Under Section 33 of the Act, where there is vacancy in the office of trustee of a religious trust and there is no one competent to be appointed as trustee under the terms of deed of such trust or where there is bona fide dispute as to the right of any person to act as trustee, the Board may subject to the order of the competent court appoint any person to act as trustee for such period not exceeding one year and upon such condition as it thinks fit. Further, sub-section (3) of Section 33 of the Act provides that if the dispute over the bona fide trustee is not decided by a competent authority, the Board shall settle a scheme for the trust under Section 32 of the Act subject to any subsequent order by the competent court. Section 48 of the Act confers power to the District Judge having jurisdiction to appoint or to remove a trustee.

9. What is noticeable in the impugned order dated 20.11.2015 is that by the said order the President of the Board has simply held that the Math in question is in possession of respondent



no. 4 and he is unmarried. Thus, he has been recognized as trustee of the Math. By the said order, neither the respondent no. 4 has been appointed as trustee nor any other order has been passed in his favour. In case, the petitioner has got any grievance against his continuation as trustee of the Math, he may invoke his remedy under Section 48 of the Act before the District Judge.

10. In view of the availability of equally efficacious statutory remedy to the petitioner, no relief can be granted to him in a summary proceeding under extra ordinary writ jurisdiction.

11. In that view of the matter, the writ petition is dismissed with liberty to the petitioner that if so advised, he may file appropriate application under Section 48 of the Act for the redressal of his grievance before the District Court.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2018
Transmission Date	NA

