

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4984 of 2009

Lakshman Das, son of Late Mahanh Bodh Ram Das, resident of village Kishanpur, P.S. - Sour Bazar, District – Saharsa.

... .. Petitioner

Versus

1. The Bihar State Religious Trust Board, through its Secretary Vidayapathi Marg, Police Station Kotwali, District – Patna.
2. The Administrator cum Special Executive Officer, Bihar State Religious Trust Board, Police Station Kotwali, District – Patna.
3. Chitnarayan Das, son of Nandlal Yadav, resident of village Thadi, Police Station Sour Bazar (Patraghat OP) District – Saharsa.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Surendra Kumar, Advocate Mr. Nirmal Kumar, Advocate
For the BSBRT	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Madan Mohan, Advocate
For the Resp. No. 3	:	Mr. Praful Chandra Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 07-01-2019

The petitioner in the present case is questioning the order dated 16.10.2008 passed by the Administrator cum Special Executive Officer (respondent no.2), Bihar State Religious Trust Board (hereinafter referred to as the “Board”), by which he has confirmed respondent no. 3 as Mahanth of Kishunpur Surmaha Thakurwari. It is not in dispute that the trust of Kishunpur Surmaha Thakurwari has been constituted under the provisions of the Bihar Hindu Religious Trust Act (hereinafter referred to as the “Act”).

Learned counsel representing the petitioner submits that it was the petitioner who was entitled to be appointed as Mahanth



upon death of Sri Soukhi Das but by ignoring his candidature said Sri Soukhi Das who was the Mahanth of the Math had got appointed his grand son (respondent no. 3) as a trustee and the said nomination made by Sri Soukhi Das Mahanth has been approved by the Board.

Learned counsel submits that this petitioner is connected with this Math since his childhood as Chela and earlier he was entitled for appointment as Mahanth when one Mittar Das who was also a Chela of Bodh Ram Das was appointed as Mahanth. He had raised an issue against appointment of Mittar Das but then in order to reconcile the whole dispute the petitioner was made assistant Mahanth.

Learned counsel submits that even in the impugned order dated 16.10.2018, the Administrator cum Special Executive Officer has taken a view that in public charitable trust the appointment of own son and grand son as a successor declaring them Chela is not a healthy trend and this may be prejudicial to the interest of the Trust but despite this observation the Administrator cum Special Executive Officer has not interfered with the appointment of respondent no. 3 and has rather affirmed the same by holding that there is no illegality or infirmity in the procedure



adopted for purpose of appointment of respondent no. 3 as Mahanth.

Learned counsel for the petitioner has submitted that respondent no. 3 was never a disciple/Chela of Sri Soukhi Das Mahanth.

On the other hand, Sri Ganpati Trivedi, learned senior counsel representing the Board submits that it is not in question that respondent no. 3 is a Virakkt Bairagi (unmarried Saint). Learned senior counsel submits that the only objection which the petitioner has, is with regard to the relationship of respondent no. 3 with the erstwhile Mahanth Sri Soukhi Das. It is submitted with reference to the provisions contained under Section 28(2)(s) of the Act that even the powers and duties of the Board contained therein permits a trustee to retire from his office and in case the trustee has power to appoint his successor, to permit him to make the appointment in his lifetime.

Learned senior counsel submits that in the present case it is admitted position that Sri Soukhi Das Mahanth being the trustee had power to appoint his successor. It is submitted that Sri Soukhi Das Mahanth exercised his power during his lifetime itself and on 05.06.2003 he appointed respondent no. 3 namely, Chitnarayan Das, a Mahanth.



Learned senior counsel submits that in view of the provisions contained under Section 28(2)(s) of the Act the Board had no option but to accept the appointment of respondent no. 3 which was accordingly done on 26.11.2003.

Learned senior counsel therefore submits that there is no law which prohibits appointment of his own kith and kin as Mahanth if he is a disciple/Chela of the erstwhile Mahanth and qualifies the eligibility as contained in the Trust deed.

Having heard learned counsel for the petitioner and learned senior counsel representing the Board, this court is of the considered opinion that the Administrator cum Special Executive Officer of the Board has taken a correct view and has rightly held that the procedure adopted in the matter of appointment of the successor of Sri Soukhi Das Mahanth is in accordance with law. So far as the observations of Administrator cum Special Executive Officer is concerned, that may be his pious wish but unless it culminates in a sanction of law and is incorporated under the provisions of the Act governing the subject, the person such as respondent no. 3 cannot be deprived of from getting appointed as a successor.

Learned counsel for the petitioner has raised certain issues with regard to the affidavit of the year 2000 which is the



basis of the appointment of respondent no. 3, it is alleged that the affidavit is forged and fabricated.

Learned senior counsel representing the Board has rightly taken a stand that such issues cannot be gone into by this court in exercise of it's writ jurisdiction.

In result, this court does not find any infirmity with the order impugned in the writ application.

So far as the allegations that the affidavit in favour of respondent no. 3 was forged and fabricated is concerned, the said issue cannot be considered by this court sitting in its writ jurisdiction as it would require adducement of evidence by both the parties. In case the petitioner wants to agitate this issue he can do so in a duly constituted proceeding before appropriate Court.

This application is, thus, disposed of with the liberty aforesaid.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.01.2019
Transmission Date	

