

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8562 of 2020

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Nawal Kishore Sureka S/o Late Murlidhar Surekha, Resident of Henry Bazar, Loharpatti, Police Station- Motihari Town, District- East Champaran, at present Sureka Saolan - Sutapati, Police Station- Town, District - Muzaffarpur.

... .. Petitioner

Versus

1. Bihar State Board of Religious Trust through its Chairman, Vidyapati Marg, Police Station- Budha Colony, Patna - 1.
2. The Chairman Bihar State Board of Religious Trust, Vidyapati Marg, Police Station- Budha Colony, Patna - 1.
3. Dipak Agrawal, S/o Kanhaiya Prasad, Resident of - Main Road, Motihari, Police Station- Motihari Town, District - East Champaran.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Mahasweta Chatterjee, Adv.
	:	Mr. Samir Kumar Sinha, Adv.
For the Respondent nos. 1 and 2	:	Mr. Ganpati Trivedi, Sr. Adv.
For the respondent no. 3.	:	Mr.Madan Mohan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

4 22-03-2021 Heard Ms. Mahasweta Chatterjee, learned counsel

for the petitioner and Mr. Ganpati Trivedi, learned senior

Advocate for the respondent no. 1 / Bihar State Board of

Religious Trust through its Chairman. The respondent no. 3

is represented by Mr. Madan Mohan, learned Advocate.

The challenge in the present petition is to the

order dated 04.08.2020 contained in Annexure -17 to the

writ petition, whereby the respondent no. 2 has declared two



buildings, namely, Manbhari Vivah Bhawan and Surekha Atithi Bhawan as public trust in the name of Manbhari Kuar Dharamshala and has directed to get the Dharamshala registered with the Board within two days and has also directed to call for the names of seven persons of the locality. The further direction in the order impugned passed by the respondent no. 2, is the instruction to the Circle Officer to get the name of Manbhari Kuar Dharamshala entered over plot nos. 474, 472, 475, 447, 458, 459, 466, 470, 461, 462 and 471 in the revenue records standing in the name of late Manbhari Devi.

The pointed argument of Ms. Chatterjee is that the aforesaid decision has been taken by the President in the absence of the Board as the Board by that time had not been constituted.

Mr. Ganpati Trivedi, learned senior Advocate for the Bihar State Board of Religious Trust has, however, submitted that the Board now stand constituted on 02.01.2021. In that view of the matter, it is the submission of Mr. Ganpati Trivedi that the objections of the petitioner



can be sustained and the order could be set aside with a direction to the Board to decide the issue in question in accordance with law as the Board is already in existence.

Ms. Chatterjee, learned Advocate for the petitioner, however, submits that once the order impugned is found to be bad in the eyes of law because of the same having been passed by an authority which did not have the competence to pass an order, the matter should be set at rest after setting aside such order. Any direction of this Court by way of remand enliven the issue. She has further submitted that the Board has the power to decide whether a trust is public or a private trust but such power cannot be exercised in case of private trust.

This argument does not appear to be convincing but is rather self defeating. The powers granted to the Board has been defined in Section 28 (2)(U) of the Bihar Hindu Religions Trust Act, 1950 which reads as hereunder.:

(2) Without prejudice to the generality of the provisions of sub-section (1), and subject to the other provisions of this Act, the powers and duties of the Board shall be-

[(u) to decide all disputes whether any trust is a public or a private trust in accordance with the definition



under Section 2(1) of this Act and the decision of the Board shall remain in force until it is set aside by a competent court.]

It is therefore absolutely clear from a bare reading of the Section that in the event of any dispute whether any trust is a public or a private trust in accordance with the definition under the Act, the decision of the Board shall be final unless it is set aside by a competent court. In that view of the matter, the argument of Ms. Chatterjee that in the absence of any declaration of a property as a public trust, the Board would not have the authority to decide the issue of it being a public or a private trust is misconceived.

The other contention of Ms. Chatterjee is that the prior to the decision by the President of the Board holding the property in question to be a public trust, the Respondent no. 3, on whose complaint the President of the Board had acted and had passed the impugned order, had approached the Civil Court in a Title Suit in which the petitioner has entered his appearance as a defendant.

Mr. Madan Mohan, Learned counsel appearing



for the Respondent no. 3 submits that such invocation of the powers of the Civil Court for deciding the Title Suit about the issue was on a wrong advice as the Civil Court could have been approached only after a decision of the Board in that regard was taken and any party was aggrieved by the said decision. Mr. Madan Mohan, learned Advocate, therefore, submits that he shall be withdrawing the aforesaid Title Suit from the court where it has been filed in order to approach the Board for the needful.

In that view of the matter, the order dated 04.08.2020 passed by the Chairman Bihar State Board of Religious Trust, is set aside.

Should such complaint be filed before the Board with respect to the properties in question, the Board shall decide the issue whether the properties in question are public trust or a private trust in accordance with law.

In case anyone of the parties feel aggrieved by that decision, it would be open for such party to approach the competent Civil Court for setting aside such order of the Board.



Needless to state that if the Board has the powers to *suo motu* take up the issue, it can do so but only after observing the principles of natural justice of affording hearing to all the parties concerned.

The writ petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

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