

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10054 of 2015

Ashok Kumar Singh, son of late Ramta Prasad Singh, resident of village Mojari, Police Station Shiv Sagar, District Rohtas at Sasaram, the Manager of Shri Thakur Jee and Mahabir Jee Mandir, Mojari.

... .. Petitioner/s

Versus

1. Bihar State Board of Religious Trust, Bihar, Patna through its President
2. Surendra Nath Singh, son of late Bhubneshwar Singh, resident of village Mojari, Post Office Torni, Police Station Shivsagar, District Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms.Mahasweta Chatterjee, Advocate
For the Respondent/s : Mr.Ganpati Trivedi, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 11-01-2022

Section 28(2)(u) of Bihar Hindu Religious Trusts Act, 1950(hereinafter referred to as ‘the Act’) confers jurisdiction upon Bihar State Board of Religious Trust (hereinafter referred to as ‘the Board’) to decide all disputes whether any religious trust is a public trust or a private trust, in terms of the definition under Section 2(l) of the Act. Section 2(l) of the Act defines ‘religious trust’ 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 recognised 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 interest [and where public offerings and donations are not received].”

2. The dispute in the present matter relates to a temple of Shri Thakur Jee and Mahabir Jee in village Mojari in the district of Rohtas. The dispute as to whether the said Trust is a private or public is pending adjudication before the Board. It appears from an order of this Court dated 24.07.2009, passed in CWJC No. 4959 of 2009 that by an order dated 04.03.2009 the Administrator-cum-Officer on Special Duty of the Board had declared the said Trust to be a public trust after having seen the records, rejecting the petitioner's claim that it was a private trust. This Court, however, set aside the said order dated 04.03.2009, by an order dated 24.07.2009, passed in CWJC No. 4959 of 2009 filed by the petitioner with the following observations :-

“The Court after perusing the records and hearing the parties is in agreement with learned counsel for the petitioner to the extent that if the final adjudication with regard to



status of the property is yet to be made then it is needless to say that the order dated 04.03.2009 passed by the administrator cannot be allowed to be sustained. To that extent the petitioner has succeeded in making out the case for interference. The order dated 04.03.2009 contained in Annexure-5 therefore stands quashed. It is left open to the parties to the dispute that they shall establish their claims before the administrator under the so called exercise of power under section 28(2)(u) of the Act. Future course of action will be dependent upon the adjudication made in this regard.”

3. It further appears that the petitioner had assailed another order dated 06.07.2011, passed by the Board arising out of the same proceeding under Section 28(1)(u) of the Act before this Court by filing a writ petition giving rise to CWJC No. 13175 of 2011. By the said order dated 06.07.2011 the parties were directed to submit their oral as also their written statement on affidavit, if so desired, which would be considered, considering the fact that the proceeding was pending since long for adjudication as to whether the Trust was a private or public trust. The parties were also directed by the said order dated 06.07.2011 to exchange their respective pleadings. This Court dismissed the said writ petition by an order dated 03.07.2012,



operative portion of which reads as under :-

“Upon considering the rival submissions of the parties and on perusal of the order dated 06.07.2011 as contained in Annexure-22, it appears that the authority had allowed opportunity to both the parties to file their oral evidence as also the written argument, if so desired, so that the proceedings could be disposed of without delay. It do not find any error in the order. As regards that the authority has no power to adjudicate the proceedings such objection was not taken before the authority.

In the facts and circumstances of the case, as taken note above, I do not find any merit in this application, the same is accordingly, dismissed.”

4. The petitioner in the present writ application has challenged an order dated 05.01.2015, passed by the Board in the same proceeding whereby, according to the petitioner, he has not been allowed to examine the then Law Agent of the Board as witness and other public representatives, such as, *Zila Parishad, Sarpanch, Mukhiya*, Member of Legislative Assembly, Block Development Officer, Circle Officer on the incorrect plea that the parties had agreed not to examine the witnesses. A subsequent order dated 29.04.2015, passed by the



Board, whereby it has refused to cancel the registration of the Trust in question, is also under challenge in the present writ petition.

5. A counter affidavit has been filed on behalf of the contesting respondents, to which the petitioner has filed a rejoinder. A supplementary affidavit has also been filed on behalf of the petitioner, which is there on record.

6. Ms. Mahasweta Chatterjee, learned counsel appearing on behalf of the petitioner has submitted, while assailing the impugned order dated 05.01.2015, that the witnesses sought to be examined were necessary witnesses for appropriate adjudication of the dispute in question. In the absence of evidence of such witnesses, the dispute in question cannot be properly adjudicated. She contends that there was no agreement of the petitioner on the point of not examining the witness as recorded by the Tribunal in its impugned order dated 05.01.2015. She accordingly contends that the impugned order requires interference.

7. Assailing the impugned order dated 29.04.2015 she has submitted that by refusing to cancel the registration of the Trust in question, the Board has treated it to be a public trust.

8. It is not in dispute that the Trust in question is



registered under Section 34 of the Act. According to her, since the trust is a private trust, the registration ought to have been cancelled by the Board on a petition filed by the petitioner which has been wrongly rejected by the impugned order dated 29.04.2015. She has contended that since this Court had set aside an order dated 04.03.2009, passed by the Administrator-cum-OSD, whereby the trust was held to be public trust, the Board ought to have treated the same to be a private trust. She has contended that the Board is proceeding in utter haste to adjudicate upon the dispute and on the pretext of expeditious disposal, it has declined to examine necessary witness and, therefore, this Court's interference is required.

9. *Per contra*, it is the respondents' case that the petitioner is attempting by all means to delay the adjudication on the real point as to whether the Trust is a private trust or a public trust. It has been asserted in the counter affidavit filed on behalf of the Respondent-Board that after passing of the order of this Court dated 24.07.2009, in CWJC No. 4959 of 2009, the petitioner had represented before the Administrator for expunging the name of the temple from the register of the Board and setting aside constitution of the committee on 06.03.2009. The Board passed an order dated 28.07.2009 maintaining that if



the Trust was finally declared private, the registration would automatically stand cancelled. The petitioner did not assail the said order dated 28.07.2009. The petitioner thereafter participated in the proceeding. On 06.07.2011, the petitioner had sought an adjournment which was objected to. The petitioner, thereafter, pleaded framing of the issue, which plea was overruled as the only issue involved was whether Shri Thakur Jee and Mahabir Jee temple was a private or public trust in respect of which the parties have already submitted their documents. As has been noticed above, the petitioner challenged the said order dated 06.07.2011 before this Court which was dismissed by an order dated 03.07.2012.

10. Submissions have been made in the counter affidavit how the petitioner was trying to delay adjudication of the dispute either on the ground of non-availability of learned Senior Counsel for the petitioner or some other reason. Paragraphs 25 to 32 of the counter affidavit read as under :-

“25. That it appears that after participating for years before the President of the Board the petitioner questioned the authority of the President to hear the dispute under Section 28(2)(u) of the Act which after hearing the parties was rejected by order dated 09.04.2013 by the President of the Board. However in



the said order it was observed that inspite of direction given by the Board and assurance given by the counsel of the petitioner did not furnish the list of witnesses he wanted to examine . It was further directed that the counsel for the petitioner to submit this written submission without any delay.

26. That it is further relevant to state that the petitioner did not assail the said order dated 09.04.2013.

27. That on the next date fixed in the case i.e. on 21.06.2013 neither the counsel for the petitioner appeared nor the counsel for the parties. Even on that day counsel for the petitioner neither filed the list of the witnesses to be examined nor did he file the written argument whereupon notices were again issued to the parties concerned informing them if no written submission is filed the case would be disposed of on the material available on record.

28. That it appears that on 26.07.2013 counsel for the parties appeared and counsel for the petitioner submitted that due to inadvertence the written submission could not filed earlier through the said was ready for filing. Whereupon the same was permitted to be filed by 29.07.2013 where after the case would be fixed for order and the order would be passed after considering the affidavit filed by the parties.

29. That it appears that on



25.11.2013 instead of filing written submissions counsel for the applicant gave their names of the witnesses to be cross examined whereas the counsel for the petitioner agreed to give names of 6 witnesses to be cross examined on the next date. It was made clear that on these witnesses would be treated as Oral evidence in the case.

30. That it appears that the counsel for the petitioner and Opp. Parties were permitted to cross examine the witnesses . It appears on different dates opportunity of leading oral evidence was given to the petitioner, 15.05.2014 was given last date to the Petitioners counsel for producing his witnesses.

31. That on 20.08.2014 only one witnesses was examined and cross examined on behalf of the petitioner On 16.09.20134 two more witnesses O.P. No. 4 and 5 were examined and cross examined and discharged. However the counsel for the Opp. Party stated that he would examine 6th witnesses on 23.09.2014. Counsel for the petitioner was directed to file the affidavit of the witnesses to be examined. After two dates i.e. adjournment the O.P. No.6, Ashok Kumar Singh (Petitioner) was examined and cross examined on 14.10.2014.

32. That it appears that on two dates i.e. on 17.11.2014 and 16.12.2014 hearing could not be taken up due to non availability of the President of



the Board . On the case was fixed on 05.01.2015 for argument on which day counsel for petitioner (Opposite party) filed an application for examining one Brajesh Sharma, a retired Inspector of the Board who had submitted his report dated 21.04.2009 .Which was opposed by the counsel for the applicant. However President of the board assured that the report would be considered in its proper perspective. Whereupon the counsels for the respective parties agreed that in view of assurance given by the President that the Enquiry report called for by the Board would be duly considered there is no need for examining the witnesses. In that view of the agreement among the counsel the application for examination of Brajesh Sharma was disposed of by the order dated 05.01.2015 itself and 27.01.2015 was fixed for argument on behalf of applicant.”

11. In the rejoinder filed on behalf of the petitioner, while not denying the averments made in paragraph 25 of the counter affidavit, it has been stated that the petitioner is not questioning the authority of the President to hear the case under Section 28(2)(u) of the Act. The petitioner has not disputed the averments made in paragraphs 25 to 32 of the counter affidavit in the rejoinder. In the supplementary affidavit filed on 06.01.2022, referring to a subsequent order passed by the Board



on 20.07.2021, the petitioner has raised a grievance that the Board is still treating the Trust to be a public trust.

12. The aforesaid uncontroverted facts, as narrated in the counter affidavit, demonstrate the petitioner's conduct before the Tribunal.

13. This writ petition came to be filed on 10.07.2015. When the matter came to be taken up on 21.02.2019, it was dismissed for default on the ground of non-prosecution. Subsequently, it came to be restored by an order dated 30.06.2021.

14. We have carefully perused the impugned order of the Tribunal dated 05.01.2015, passed on the petitioner's application for examination of one Brajesh Verma, the then Law Agent of the Tribunal who had submitted his inspection report before the Board after physical verification of the temple on 21.04.2009. The Board observed in the said order dated 05.01.2015 that said Brajesh Verma in his report had not given his independent opinion and had referred to only such facts which were presented before him by both the parties. Accordingly, while adjudicating the dispute, the Tribunal shall consider all other documents including the said inspection report. The Tribunal further recorded, in the aforesaid



background, agreement of learned counsel for the parties that there was no requirement of summoning Brajesh Verma as a witness as the Tribunal would be deliberating upon the findings recorded in his enquiry report.

15. On the petitioner's petition for cancellation of registration of the Trust with the Board, the Board recorded in the other order dated 29.04.2015 that since the order was already passed earlier on 29.07.2009, there was no requirement of cancellation of registration.

16. On the basis of the pleadings on record and his conduct, we are of the considered opinion that the petitioner is least interested in adjudication on the question as to whether the trust is a private trust or a public trust. He is somehow or the other hindering adjudication and lingering the matter either by seeking unnecessary adjournments before the Tribunal or by challenging interim orders passed by the Tribunal before this Court.

17. It appears from the impugned order that the petitioner wanted to summon one Brajesh Verma as witness who was the then Law Agent of the Board and had submitted an inspection report. It has been specifically recorded in the impugned order that the inspection report did not contain any



finding recorded by the then Law Agent of the Board. It was clearly mentioned that every aspect mentioned in the said inspection report would be duly considered by the Tribunal. The petitioner, in the present application, is disputing the fact that the petitioner's counsel had agreed before the Tribunal that there was not requirement of examination of the said Law Agent Brajesh Verma.

18. The petitioner challenged the said order dated 05.01.2015 passed by the Tribunal in July 2015. Apart from the fact that we do not find any legal infirmity in the impugned order dated 05.01.2015 passed by the tribunal, we are of the view that the petitioner has apparently filed this writ application to delay adjudication on the real issue by a competent Board. The conduct of the petitioner is apparent also from the fact that he has put to challenge another order passed by the Tribunal dated 29.04.2015, whereby the Tribunal refused to cancel registration of the Trust.

19. There is no gainsaying that the question as to whether the Trust is a public trust or a private trust is yet to be adjudicated upon. It was rightly pointed out by the Tribunal that in the event the Trust is held to be private, its registration would lose its significance. Cancellation of registration, at the present



stage, would amount to recording of finding that the trust is a private trust.

20. In our view, no litigant can be permitted to linger a litigation and maintain a litigation only for the purpose of keeping a dispute pending. The petitioner, in our opinion, by filing the present writ application, has misused the process of the court.

21. This application is accordingly dismissed.

22. Considering the conduct of the petitioner, as emerging from the pleadings on record, we consider it appropriate to impose cost on the petitioner, which is quantified at Rs. 20,000/- to be paid by the petitioner in the account of Bihar State Legal Services Authority within six months from today.

(Chakradhari Sharan Singh, J)

I agree.
Madhuresh Prasad, J.

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2022
Transmission Date	NA

