

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22404 of 2019

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Mahanth Ram Shankar Das, Chela of Late Baliram Das, Resident of Raipur Math, P.S.- Ujiarpur, District Samastipur.

... .. Petitioner

Versus

1. The State of Bihar Through Law Secretary, Government of Bihar.
2. The Bihar State Board of Religious Trust through its Chairman, Vidyapati Marg, Police Station-Budha Colony, District-Patna.
3. The Chairman, Bihar State Board of Religious Trust, Vidyapati Marg, Police Station-Budha Colony, District- Patna.

... .. Respondents

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Appearance :

For the Petitioner : Ms. Mahasweta Chatterjee, Advocate
For the Respondents-Board: Mr. Ganpati Trivedi, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 12-08-2022

Heard Ms. Mahasweta Chatterjee, learned counsel for the petitioner, Mr. Ganpati Trivedi, learned senior counsel for the Bihar State Board of Religious Trust (hereinafter referred to as 'the Board') and perused the writ petition as well as the counter affidavit filed on behalf of respondent nos. 2 and 3.

2. In the present application, the petitioner has assailed the show cause notices issued by respondent no.2 dated 16.09.2019 and 24.09.2019 by which the petitioner has been directed to appear before the Board and produce the relevant documents with regard to the trust (Raipur *Math*) in question.



Subsequently, by filing an interlocutory application, the petitioner has also challenged the entire proceedings pending before the Board in respect of the aforesaid trust.

3. Ms. Mahasweta Chatterjee, learned counsel for the petitioner submitted that Raipur *Math* is situated in Raipur village of District-Samastipur. It is a very old *Math*. The petitioner is chela of Mahanth Baliram Das, who was the chela of Narayan Das and the Guru of Narayan Das was Awadh Bihari Das who was the chela of Mahanth Raghunandan Das. The management in question was always done of Mahanth and the Math is not registered with the Board. The Guru of the petitioner was murdered on 28.12.1992. Thereafter, the petitioner being his only chela performed his last rites and also performed *Shradh* and *Bhandara* on 08.01.1993. After the *Shradh* ceremony, as per tradition, there was a meeting on 08.01.1993 and it was recorded that the petitioner has been appointed as the Mahanth of the *Math*. Subsequently, by an order dated 13.01.1993, that is, only after four days, the petitioner was appointed as Mahanth of the *Math* in question. The Board appointed the Sub Divisional Officer, Dalsinghsarai as the temporary trustee of the *Math* in question under Section 33 of the Bihar Hindu Religious Trust Act (hereinafter referred



to as 'the Act') and also requested the Sub Divisional Officer to take charge of the *Math* in question. After the order dated 13.01.1993 was passed, when the petitioner came to know about the appointment of temporary trustee, he filed petition before the Board communicating about his appointment as Mahanth on 08.01.1993. One Ramadhar Das also filed a petition before the Board claiming himself to be the chela of Mahanth Narayan Das and Guru Bhai of Mahanth Baliram Das and also claiming that after the death of Mahanth Baliram Das, he has been appointed as Mahanth by way of giving him *Chadar* and *Pagari*. The Board considering the claims of the petitioner and Ramadhar Das and after hearing both the parties, vide order dated 21.05.1994 dismissed the claim of the petitioner and declared Ramadhar Das as Mahanth of the *Math* in question.

4. Being aggrieved, the petitioner preferred a writ petition vide C.W.J.C. No.6081 of 1994 before this Court for setting aside the order passed by the Board dated 21.05.1994 by which Ramadhar Das was appointed as the Mahanth of the *Math* in question. In the said writ petition, vide order dated 15.05.1998, the application was allowed and the order dated 21.05.1994 was set aside. This Court in the writ application held that Ramadhar Das was never appointed as trustee at any point



of time after the death of Mahanth Baliram Das and the finding arrived at by the Board was held to be perverse.

5. Ms. Chatterjee argued that after the disposal of C.W.J.C. No.6081 of 1994, the matter had attained finality and the petitioner was treated as Mahanth of the *Math* in question. She contended that under such circumstance, the issuance of show cause notices by the Board for deciding the nature of the trust is wholly illegal and without jurisdiction. She submitted that Section 28(2)(u) of the Act would have no application in the present matter as there is no pending dispute regarding the nature of the trust.

6. In reply, Mr. Ganpati Trivedi, learned senior counsel appearing for the respondent nos. 2 and 3 submitted that the contention advanced on behalf of the petitioner are misconceived. He submitted that pursuant to the order dated 15.05.1998 passed in C.W.J.C. No.6081 of 1994, the matter had been remitted to the respondent authorities to decide the issue regarding the nature of the trust. He contended that the order dated 15.05.1998 passed in C.W.J.C. No.6081 of 1994 had left the question regarding the nature of the trust to be adjudicated and, thus, it cannot be argued that the Board is exercising its jurisdiction in teeth of the order passed by this Court earlier into



the matter. In support of his submissions, he has drawn our attention towards the order passed by this Court in C.W.J.C. No.6081 of 1994 as contained in Annexure 4 to the writ petition.

7. We have heard the parties and carefully perused the averments made in the writ petition as well as in the counter affidavit.

8. Primarily, the dispute in the present case is regarding the nature of the Raipur trust.

9. Section 28(2)(u) under Chapter V of the Act, provides that without prejudice to the generality of the provisions of sub-section (1) and subject to the other provisions of the Act, the powers and duties of the Board shall be to decide all disputes whether any trust is a public or a private trust in accordance with the definition under Section 2(l) of the Act and the decision of the Board shall remain in force until it is set aside by a competent court.

10. On perusal of the order dated 15.05.1998 passed in C.W.J.C. No.6081 of 1994, we find that it was argued on behalf of the petitioner that the respondent-President of the Board has no jurisdiction or authority to interfere with day-to-day functioning of the trust including appointment of the temporary trustee unless and until the nature of the trust is decided either



by the authority appointed under Section 43 of the Act and/or a competent civil court. It was also argued on behalf of the petitioner that the trust in question is a private trust and, as such, the provisions of the Act would not be attracted against it.

11. To the submission made on behalf of the petitioner in the aforesaid C.W.J.C. No.6081 of 1994, the Court observed as under:-

“Now coming to the first submission of the learned counsel for the petitioner to the effect that the Math, in question, is a private Trust, and, as such, the provisions of the Act are not attracted in the facts and circumstances of this case, in my view this is a mixed question of fact and law and, in order to decide the nature of the Trust, both oral and documentary evidence will have to be adduced by the parties before a positive finding is arrived at on such a question of fact. It is obvious, therefore, that in a proceeding under Articles 226 and 227 of the Constitution of India, this basic jurisdictional fact cannot be decided by this Court. However, the Board, before invoking the various provisions of the Act, has initially to decide prima facie as to whether the Math is a private Trust or a Public Trust, but such a decision of the Board is always subject to the final decision of the



competent civil court. Accordingly, the first submission of Mr. Jha cannot be accepted.”

12. It is true that in the said writ petition after going through the materials which were brought on record, the Court opined that the petitioner had been appointed Mahanth after following the prescribed ceremony in presence of *sadhus*, *sants* and general public, which has been endorsed by the *Anchaladhikari* and Sub Divisional Officer and the Additional Collector as well as Collector of the District. The Court was also of the opinion that there was nothing on record as to how and when he was removed from the post of trustee. Thus, the Court concluded that the private respondent Ramadhar Das was never appointed as the trustee of the trust in question and the contrary finding arrived at by the respondent-President of the Board was perverse and cannot be accepted and after holding that, the Court set aside the order dated 21.05.1994 passed by the respondent-Chairman of the Board and allowed the writ petition. However, before parting with the case, the Court observed that if the situation so warrants, the respondent authority will be at liberty to appoint the trustee in accordance with law without being prejudiced by the order of this Court.

13. Thus, it can safely be said that the issue whether



the trust in question was a private trust or a public trust was left open to be decided in an appropriate proceeding. We have seen that the nature of the trusts can be adjudicated by the Board in exercise of the powers conferred under Section 28(2)(u) of the Act.

14. In view of the specific provisions prescribed under Section 28(2)(u) of the Act, it cannot be said that the notices issued to the petitioner were without jurisdiction.

15. We are of the opinion that the instant writ petition is premature as only show cause notices have been issued to the petitioner to appear before the Board and produce relevant documents with regard to the claim that the trust in question is a private trust. The show cause notices issued to the petitioner do not infringe upon the right of the petitioner.

16. In that view of the matter, we see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

(Shailendra Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2022
Transmission Date	NA

