

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1086 of 2021

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Ajay Kumar Mahto Son of (Late) Jivachh Mahto present Shebait of Sri Ram Janki Mandir, Sonpatahi and descendant of the family of land- donor Late Most. Jaleshwari resident of Village and Post- Sonpatahi, Ward No. 05, P.S.- Babubarhi, Block- Babubarhi, District- Madhubani (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate (D.M.) Madhubani.
2. The District Magistrate (D.M.), Madhubani.
3. The Circle Officer, Babubarhi, Anchal- Babubarhi, District- Madhubani (Bihar).
4. The Bihar State Board of Religious Trust, Vidyapati Marg, Patna- 01.
5. The President, Bihar State Board of Religious Trust, Vidyapati Marg, Patna- 01.
6. Sur Shyam Das Son of Shri Chandra Mahto resident of Village and Post- Sonpatahi, P.S.- Babubarhi, Block- Babubarhi, District- Madhubani (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Nath Jha, Advocate
For the Respondent/s	:	Mr. Rishi Raj Sinha, SC-19
For the Resp. No.6	:	Mr. Manoj Kumar Jha, Advocate
For the BSBRT	:	Mr. Ganpati Trivedi, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

C.A.V. JUDGMENT

Date : 22-12-2023

The petitioner claimed to be Shebait of Sri Ram Janki Mandir, Sonpatahi (Babubarhi) has filed the present writ petition under Article 226 of the Constitution of India seeking quashing of the letter dated 07.03.2013 (Annexure-3 to the writ petition) issued by the respondent no.5 whereby and whereunder the respondent no.6 has been appointed as Trustee of the temple, in question, allegedly, without the procedure followed under the law. The petitioner further sought relief to hold and declare that



neither the Bihar State Board of Religious Trust, Patna (hereinafter referred to as 'the Board') nor the respondent no.6 has got any concern over the lands and properties of the deities as well as of the temple and in the aforesaid facts let a direction be given to the respondent authorities to protect the legal right, title, interest and peaceful possession of the deities as well as the present petitioner from the respondent no.6. The petitioner also prays for restraining the respondent nos. 4, 5 and 6 from interfering into the smooth functioning and management of the Rag-Bhog & other daily routine work of the deities, further a direction to the local administration to protect the landed property of the deities from the unscrupulous person/anti-social elements, who have greedy eyes on the properties of the temple, in question.

2. It is the case of the petitioner that he being successor-in-interest of the land donor late Mostt. Jaleshwari, who dedicated her own lands measuring about 3 Kathas in favour of the deities-Sri Ram Chandra Jee & Sri Lakshman Jee & Sri Janki Jee & Sri Hanuman Jee (hereinafter referred to as 'the deities') through a deed of Samarpan Nama dated 03.06.1957, is declared as Shebait of the temple, in question. All these deities are installed in an old temple, which is out and out a private and personal temple of the family of the donors and



moreover, neither the general public nor the Board has got any concern with the management, worship and Bhog-Rag of the deities/temple.

3. Learned counsel for the petitioner while drawing the attention of the deed of Samarpan Nama (Annexure-1) submitted that there is clear recital in it that the intention and will of the donor was to the effect that only the successor of her family could become the Shebait of the deities, hence in any view of the matter, neither the Board nor the respondent no.6 had/has any claim over the property or right to interfere in the peaceful management of the deities. After passage of time, all the execution of the aforesaid Samarpan Nama, several other donors of the locality also dedicated their respective lands in favour of the aforesaid deities and at present the total landed properties have come around 4 Bighas 10 Kathas, as per the revenue records, which is in the name of the deities.

4. Having seen the prosperity and amass landed property, the respondent no.6 in order to grab the same clandestinely approached before the Board vide his letter dated 04.01.2013 and surreptitiously obtained a certificate in his favour vide letter/order dated 07.03.2013 from the Board and in this way became the sole trustee of the temple, in question. It is



vehemently submitted that the impugned order dated 07.03.2013 is not only in violation of the principles of natural justice, without issuing any notice to the then Shebait of the deities i.e. the father of the present petitioner, but also without making any enquiry and considering the necessary documents. He further submits that respondent no.6, apart from stranger of the village, in question, is a fraud claiming himself to be a Sanyasi and Shebait of the temple, but the fact is that he had no connection with the family of the said land donor, Mostt. Jaleshwari and in any other donor.

5. It is also stated that the father of the petitioner late Jivachh Mahto when came to know about the impugned order dated 07.03.2013, challenged the same before the Board by filing a petition dated 01.08.2013, but till date no order has been passed on the objection petition and his father died in the meantime, waiting any response from the Board. It is the further case of the petitioner that after the death of his father he has been managing the Bhog-Rag and the affairs of the temple and in order to disturb the peaceful possession of the petitioner, the respondent no.6 has brought several proceeding including the criminal case against the descendants of the family of the executant of the said Samarpan Nama only with a view to illegally grab the temple, in question, by declaring it to a public



temple. The fact that the petitioner having been coming in peaceful possession is also evident that when the family of the donors did not allow the respondent no.6 to enter into the peaceful management of the private temple and the deities, the respondent no.5 filed C.W.J.C. No. 25145 of 2019 before the Hon'ble Court by claiming himself to be the Shebait of the deities seeking a direction upon the respondents to get free the land of Sri Ram Janki Mandir from the possession of anti-social persons, who have allegedly taken possession over the land and also to protect the life of respondent no.6.

6. Needless to mention that the petitioner and others were not made parties-respondent in the aforementioned writ petition and finally the matter was disposed of with a direction to respondent no.6 to approach the Superintendent of Police, Madhubani by filing a representation. The petitioner having come to know about the order of the Hon'ble Court passed in C.W.J.C. No. 25145 of 2019, on being advised by his lawyer filed L.P.A. No. 12 of 2021 and the learned Division bench having taken note of the dispute and pendency of the writ petition (C.W.J.C. No. 1086 of 2021) disposed of the Letters Patent Appeal with a direction to the parties to agitate their cause in the present writ petition without making any observation on the merit of the case.



7. A counter affidavit has been filed on behalf of respondent nos. 4 and 5.

8. Mr. Ganpati Trivedi, learned senior counsel representing the Board while refuting the contention of the petitioner has raised preliminary objection with regard to the maintainability of the writ petition: Firstly; on the ground of delay, as the present writ petition has been filed belatedly after 8 years of the impugned order, irrespective of the fact that the father of the petitioner had filed objection way back in the year 2013 itself. Secondly; the petitioner has efficacious remedy under Section 48 of the Bihar Hindu Religious Trusts Act, 1950. Thirdly; on the point that the present writ petition is barred on the principles of estoppel, as admittedly the temple, in question, has been registered with the Board, having Registration No. 4226, but the same has not been challenged, which was available to him.

9. Mr. Trivedi further drew the attention of this Court to Annexure-4 to the writ petition and with reference thereto he submits that admittedly the father of the petitioner disclosed that he had been discharging his duties as Pujari since last 20 years and there was no claim of Shebaitship on the temple, in question, and as such the petitioner in no circumstance can get any better right, what his father was



possessing. In view of Annexure-2, it is needless to say that the father of the petitioner was only a Pujari and this Court in the case of **Gauri Shankar Vs. Ambika Dutt and Others**, reported in **AIR 1954 Pat 196** has been pleased to hold that Shebait and Pujari have different connotation. The Pujari is servant of Shebait and he can continue only with the sanction of Shebait.

10. He further submits that evidently the temple, in question, existed from long past and persons of locality made donations in favour of the deities for its maintenance and those land stood recorded in the name of the deities. That apart, there is no deed of dedication by the original founder of the temple creating line of succession with Shebait. Moreover, Religious Trust has been defined under Section 2(1) of the Act, which reads as follows:

“2(1) *“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 interested [and where public offerings and donations are not received]”

11. Referring to the facts and the definition, he



submits that the Religious Trust can be declared even expressly or constructively where offering and donations are being received. Thus, admittedly, donations have been accepted, hence in view of the admitted position the temple, in question, is a religious trust within the meaning of Bihar Hindu Religious Trusts Act, 1950. He having said so, submits that the Board is empowered under Section 34(2) of the Act to register a religious trust even suo moto. Reliance has also been made on a judgment rendered by this Court in the case of **Mundrika Kuer Vs. Bihar State Board of Religious Trust & Ors**, reported in **1968 PLJR 197**.

12. Mr. Trivedi, learned senior counsel next submitted that now after coming into force of amendment inserting the provision under Section 28(2)(u), the Board is empowered to decide a dispute regarding the nature of the Trust. Thus, if the petitioner has any grievance, he can approach the Board. Referring to the aforesaid judgment of this Court, in the case of **Mundrika Kuer** (supra), he further submits that the nature of the Trust as to public and private being dependent upon the disputed question of fact cannot be decided in the extraordinary jurisdiction conferred under Article 226 of the Constitution of India. If the petitioner is not satisfied with the order passed by the Board in relation to the nature of the Trust,



he ought to approach a competent court of civil jurisdiction.

13. A separate counter affidavit has also been filed on behalf of respondent no.6. Mr. Manoj Kumar Jha, learned counsel representing the respondent no.6, apart from his submission that the present writ petition is not maintainable, he submitted, inter alia, that the petitioner has got no right, title and interest in the temple, in question, as neither the predecessor in interest of the petitioner nor the petitioner was ever made Shebait of the temple. The temple, in question, is a public religious trust since the date of its inception, as the villagers after collecting donations with the permission of ex-landlord Babu Jagdish Nandan Singh established temple in the year 1940 and further the ex-landlord settled the land in favour of the deities in the year 1947. After the aforesaid settlement, Jamabandi No. 820 was created in the name of temple and Raghunandan Mahto son of Kailu Mahto, who was shown as Shebait of the temple. Subsequently, the temple was registered by the Bihar State Board of Religious Trust. He further denied the submission of the petitioner that he is grand-son of Mostt. Jaleshwari or anyhow related to the land owner. Moreover, the Samarpan Nama is a forged and fabricated, on the basis of which claim is being made to anyhow grab the lands of the temple.



14. The contention of the Board as well as respondent no.6 has vehemently refuted by filing separate rejoinder to the respective counter affidavits. Mr. Shashi Nath Jha, learned counsel for the petitioner reiterating his submissions made in the writ petition as well as rejoinder to the counter affidavit, submitted that there is neither any trust created nor there is any trust deed. There is only endowment and donation of some landed properties in favour of the deities/idol; and if there is no Religious Trust is in existence, the Board cannot interfere. In this regard, reliance has also been made on a judgment of the Hon'ble Court in the case of **Pavitra Kuer Thakur Ram Jayaswal Vs. The State of Bihar & Ors. [2002 (4) PLJR 578]**.

15. He next submitted that by mere offerings and pooja-path by the outsiders, a private dedication to deities cannot be treated as public Trust. Reference may be taken to the note of **Sri Sri 108 Bhagwati Maharani Vs. Bihar Hindu Religious Trust Board & Ors.** reported in **2008(1) PLJR 368**. He further submits that even a temporary trustee can be appointed from the family of donor, but in the present case, a stranger to the family has been made trustee of the temple, in question, which is not only contrary to the provisions of the Act, but also not in conformity with the mandate of the Hon'ble



Court passed in the case of **Mahant Motilal Goswami Vs. The State of Bihar & Ors**, reported in **1993 (1) PLJR 767**.

16. On the point of locus standi of the petitioner, he placed his reliance upon a judgment of the Hon'ble Supreme Court in the case of **Sri Ganapati Dev Temple Trust Vs. Balakrishna Bhat & Ors**, reported in **2019(4) PLJR SC 300/ (2019) 9 SCC 495** wherein the Hon'ble Supreme Court held that even any person other than the Shebait can also initiate legal proceedings for protection of the properties of the deities.

17. He lastly submits that the provisions of Sections 32 and 33 of the Act were not followed by the Board before issuance of impugned order appointing respondent no.6 as the trustee of the temple or treating the temple as public trust property. So far the remedy under Section 48 of the Bihar Hindu Religious Trusts Act, 1950. is concerned, the same is not applicable in the present case, as admittedly there is no trust in existence relating to the deities properties.

18. This Court has meticulously heard the parties and perused the materials available on record. From the record, it is evident that for the purposes of declaration of Religious Trust, not only express declaration, rather it can be declared constructively also. In the case in hand, admittedly after construction of temple, many donors of the locality donated in



favour of the temple for maintenance, which where duly accepted.

19. However, it would be worth mentioning that by mere donation and worship by the public, the deities/temple cannot be treated as a public temple, which issue has been dealt with by a Bench of this Court in the case of **Sri Sri 108 Bhagwati Maaharani Vs. The State of Bihar & Ors.** (supra). Section 2(l) of the Bihar Hindu Religious Trusts Act, 1950 does not include a private endowment created for the worship of a family idol in which public in general are not interested. Admittedly in the case in hand, some persons having faith in the deity donated some landed properties in its favour and their descendants are claiming their rights on documentary evidence and thus before exercising jurisdiction at the ends of Trust Board, they cannot shirk from their responsibility to record a finding that an express or constructive trust was created.

20. Section 32(i) of the Act, 1950 empowers the Board to settle schemes for proper administration of religious trusts. However, it clearly stipulates that an application/complaint must be filed by two or more persons, who are interested in any trust. In absence, there is no cognizance of such application could have been taken by the Trust Board. This Court also finds that instead of making spot



verification or asking a report from local authorities or to notice persons claiming or interested with the temple/deity, in question, asking recommendation from Akhada of Ayodhya, who had no concern with the temple, might be acquainted with the person in whose favour, the Board is likely to pass an order appointing him a Trustee, cannot form a conclusive opinion to pass the order of appointment of trustee.

21. This Court time without number made it clear that before passing any order or making decision under 28(2)(u) has cautioned the Board to adhere to the principles of natural justice and to provide opportunity of hearing to the interested/evicted person. It is manifest from the impugned order, as contained in Annexure-3, that the order for appointment of trustee is passed without any enquiry or notice to the affected person.

22. This Court also cannot lost sight of the fact that respondent no.6 was out of possession from the properties of the temple compelling him to file CWJC No. 25145 of 2019 whereas contrary to the fact the petitioner is in possession of Samarpannama (Annexure-1 to the writ petition) and his entire claim rests upon it. The challenge of the appointment of respondent no.6 had also been made by the father of the petitioner, but remained unanswered. So far, the plea of delay



and, as such, the writ petition being barred by limitation is concerned, well settled it is that any order which is wholly without jurisdiction, void ab initio can be challenged at any point of time, mere passage of time would not get it sanctified.

23. It is needless to observe that no law of limitation applies in a writ jurisdiction and wherever and whenever this Court while exercising power of extraordinary jurisdiction under Article 226 of the Constitution can hold and declare any order unsustainable, if it is found to be per se illegal, without jurisdiction and in complete violation of the principles of natural justice.

24. It would also be apposite to note that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out. Vide **Mohinder Singh Gill & Anr vs The Chief Election Commissioner, New Delhi & Ors, AIR 1978 SC 851.**

25. In the aforesaid settled legal position and on careful perusal of impugned order dated 07.03.2013 (Annexure-3 to the writ petition) prima facie it appears that the same has



been passed on the application filed by respondent no.6, after obtaining the recommendation from the Mahanth of Nirwani Akhada Hanumangarhi, Ayodhya as well as Bhartiya Akhada Parishad, without there being any enquiry or providing opportunity of hearing to the interested/affected person.

26. The plea of estoppel, as raised in the present writ petition on behalf of Bihar State Board of Religious Trusts also does not inspire any force, as there cannot be any estoppel against the law that too in a facts where the father of the petitioner had challenged the very appointment of respondent no.6, as trustee, but the same has never been answered. In such an event, fault/laches if any, pointing fingers towards the Board, who failed to discharge its duty.

27. On the reasons aforementioned, this Court finds that the petitioner is able to make out good grounds to interfere in the impugned order and accordingly, the impugned order dated 07.03.2013, as contained in Annexure-3 to the writ petition, issued under the signature of President, Bihar State Board of Religious Trust is hereby set aside.

28. The matter is relegated to the Board of Religious Trust, who shall consider the claim of the petitioner and other interested/affected person in connection to the deities/ temple, in question, qua the claim of respondent no.6 after



giving them proper opportunity of hearing. The aforesaid exercise must be completed preferably within a period of 8 weeks from the date of receipt/production of a copy of this order.

29. Needless to observe that respondent Religious Trust Board shall carefully look into all the documentary evidences and also get a local enquiry done before passing the final order.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	30.10.2023
Uploading Date	24.12.2023
Transmission Date	NA

