

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2362 of 2016

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The Bihar State Board Of Religious Trusts situated at Vidyapati Marg, PS-
Budha Colony, district – Patna through its President.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Land Reforms Department Government of Bihar,
Patna.
3. The Chairman cum Member Board of Revenue, Government of Bihar,
Patna.
4. The Collector, Gopalganj.
5. The Additional, Collector, Gopalganj
6. The Circle Officer, Barauli Anchal, PS- Barauli, District- Gopalganj
7. Sri Amar Nath Prasad Sons of Ram Chandra Raut, resident of Village-
Madhopur, PS- Barauli, District- Gopalganj
8. Uma Shankar Prasad
9. Ramashankar Prasad 8 and 9 sons of Ram Chandra Raut, resident of Village-
Madhopur, PS- Barauli, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Advocate
For the State	:	Mr. Manoj Kumar Sinha, Advocate
For the respondent		
Nos. 7 to 9	:	Mr. Nagendra Rai, Advocate
For the Responden		
Nos. 3to 9	:	Mr. Koshalendra Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. JUDGMENT

Date : 25-07-2023

Heard Mr. Ganpati Trivedi, learned Senior
Counsel for the petitioner as also Mr. Nagendra Rai, learned
counsel who represents the respondent nos. 7 to 9, Mr. Navin



Nikunj and Mr. Koshalendra Rai, learned counsel for the respondent nos. 3 to 6.

2. The writ petition has been preferred by the Bihar State Board of Religious Trust (henceforth for short 'the Trust') for quashing of the order dated 15.06.2015 passed by the Chairman, Bihar Land Tribunal, Patna (henceforth for short 'the Tribunal') in B.L.T. Case No. 769 of 2013 by the which the order dated 29.08.2013 passed by the Chairman –cum- Member, Board of Revenue, Bihar Patna in Ceiling Revision No. 04 of 2013 as also the order dated 09.10.2012 passed by the Collector, Gopalganj in Ceiling Case No. 02 of 2010 were set aside.

3. The matrix of facts giving rise to the present petition is/are as follows :-

4. 'The Trust' has been established by the Government of Bihar with the aim and object to protect and preserve the religious places/trust as also its properties.

5. The Madhopur Math in the district of Gopalganj is a Public Religious Trust having landed property amongst other in the village- Madhopur under the circle, Barauli in the district of Gopalganj.

6. One Mahant Kishore Das, the then Mahanth of



Madhopur Math preferred an application before 'the Trust' on 02.01.1975 seeking permission to sell eight (8) '*Bighas*' of land for liquidating the loan borrowed by him, for meeting the expenses as also for purchasing oxen and doing necessary repair works.

7. Pursuant thereto, 'the Trust' gave sanction for selling four (4) '*Bighas*' of land with a direction to utilize the same to liquidate the mortgage debt and the same was communicated to Mahanth Kishore Das on 13.03.1975.

8. Accordingly, Mahanth Kishore Das sold four (4) '*Bighas*' of land on 21.03.1975, the details of which are as follows:-

<u>Khata No.</u>	<u>Plot No.</u>	<u>Area</u>
B-K-D 64	14	0-05-18
	15	01-05-03
	452	02-08-19
		Total 4-00-00

9. Subsequently, the lands were also mutated in favour of the new purchaser.

10. Land ceiling proceeding with respect to the property of Math was going on and as the contents, Mahanth Kishore Das had not taken any previous permission of the



Collector for selling the four (4) '*Bighas*' of land.

11. Mahanth Kishore Das in the meantime died and was replaced by his '*chela*' Ram Kishore Das.

12. Later upon knowledge that sale proceeds were not used for the purpose the sanction was given, vide letter no. 6827 dated 06.12.1979 'the Trust' directed the next successor to get the land recovered.

13. Meanwhile a Title Suit No. 114 of 1988 too come to be preferred before the Court of learned Special Judge, Gopalganj by Mahanth Ram Chandra Das in collusion that his '*chela*' Mahanth Bikhari Das claiming right, title and interest in the properties of the Math which included the land in dispute.

14. A Ceiling Case No. 01 of 1992-93 was initiated against Madhopur Math, Mahanth Ravi Chandra Das in which one unit of Class -1 land, (an area of 19 acres 12 decimals) were allotted to the Math and rest 14 acres 16 decimals were declared surplus. The surplus land also included the lands transferred in favour of the family of respondent nos. 7 to 9.

15. The gazette notification under Section 11(1) and Section 15(1) of the Ceiling Act was published on 01.01.1994.



16. Challenging the said gazette notification, Mahanth Bikhari Das ('chela' of Mahanth Ramchandra Das) preferred CWJC No. 1460 of 1996 before the Patna High Court with the prayer that the lands which has been transferred in favour of the private respondents has to be adjusted in the ceiling unit allotted to the Math.

17. The writ application was dismissed which followed L.P.A. No. 1324 of 1997 and the same was disposed off giving liberty to the appellant to move before the Collector and file objection. Accordingly, the objection was preferred before the Collector, Gopalganj and the same was registered as objection/application Case No. 06 of 1997. The Collector rejected the said objection and uphold the gazette notification dated 01.01.1994 by an order dated 09.11.1999.

18. This was challenged in CWJC No. 12728 of 1999 which was allowed on 27.04.2010 with a direction to the Collector, Gopalganj to allow the Mahanth to exercise fresh option for choosing lands which he wanted to retain.

19. Accordingly, the Mahanth filed Misc. Ceiling Case No. 01 of 2011-12 before the Collector, Gopalganj in which the respondent nos. 7 to 9 were noticed, appeared and raised objection.



20. The contention of the private respondents was/were that the land having been purchased by them which was alienated pursuant to the sanction given by 'the Trust', the same is a valid transfer and as such it either needs to be excluded from the ceiling proceeding or be clubbed with the ceiling unit of the Mahanth in terms of Section 9 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (henceforth for short 'the Act').

21. It is appropriate to bring on record Section 9 of 'the Act' which read as follows:-

9. Option of family to select its ceiling area.- (1) Where the area of land held by a family exceeds the ceiling area it shall have, subject to the provisions of sub-sections (2), (3) and (4) and other provisions of this Act the option to select within the period prescribed in sub-section (3) of Section 10, the land which it desires to retain in accordance with the provisions of Section 5.

(2) Where the land held by the land-holder includes land transferred by him in accordance with or in contravention of the provisions of clause (ii) of sub-section (1) of Section 5, the land so transferred in accordance with or in contravention of



clause (ii) of sub-section (1) of Section 5 shall to the extent of the ceiling area admissible to the land holder, be deemed to have been selected by him for retention within the ceiling area; and where the total area of such land is less than the ceiling area admissible to him, the land holders shall select the balance of ceiling area from his remaining land;

Provided that where the land so transferred in accordance with or in contravention of clause (i) of sub-section (1) of Section 5 is equal to or more than the ceiling area admissible to him and if because of the selection under sub-section (2) the land- holder's homestead cannot be retained within his ceiling area, the land-holder may be permitted to hold his homestead subject to a maximum limit of two acres only.

(3) Where the land held by the land holder includes land where transfer has been annulled under clause (iii) of sub-section (1) of Section 5 but does not include any land transferred in accordance with or in contravention of the provisions of clause (ii) of sub-section (1) of Section 5 the land holder shall select to the extent of fifty percent of his ceiling area from land where transfer has been annulled under clause (iii)



of sub-section (1) and shall select the balance of the ceiling area from other lands held by him.

(4) Where, however, the land held by the land holder includes land transferred by him in accordance with or in contravention of the provisions of clause (ii) of sub- section (1) of Section 5 as well as land whose transfer has been annulled under clause (ii) thereof, the land transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 shall, to the extent not exceeding the ceiling area, be deemed to have been selected by him within his ceiling area first and if this land is less than ceiling area admissible to him, he will select the remaining land to be retained by him within the ceiling area firstly from the land whose transfer has been annulled under clause (ii) of sub-section (1) of Section 5 to the extent of fifty per cent of the remaining ceiling area only and the balance will be selected by him from out of the remaining land:

Provided further that where the land-holder fails to select land within the stipulated time, it shall be lawful for the Collector to allot to the land-holder land equal to the ceiling area to be retained by him under Section 5 keeping in accordance



with this Section.]

22. Meanwhile, 'the Mahanth' of the Madhopur Math was removed and the Collector, Gopalganj became Administrator of the Math. He in turn delegated the authority to the Circle Officer, Barauli for managing the affairs of the Math. The Circle Officer, Barauli clubbed the lands of the petitioner with that of the Math while auctioning the crops grown over the land of the Math in the year 2000.

23. Aggrieved, the respondent nos. 7 to 9 preferred Misc. Case No. 26 of 2000/02 of 2005-06 before the Additional Collector (Ceiling), Gopalganj with a prayer to refund the sale proceedings realized from the auction of crops grown over their land which has been deposited in the treasury. The total claim of the amount was Rs. 1,12,100/- The second prayer was to restrain the Circle Officer, Barauli to interfere in the management of the private respondents land.

24. The Additional Collector (ceiling) Gopalganj vide an order dated 03.10.2007 held that the Circle Officer, Barauli illegally auctioned the crops grown over the petitioner's land (private respondents herein) and gave direction to refund the auction amount deposited in the Government Treasury accordingly.



25. However, instead of the return of the amount, the Collector, Gopalganj stepped in and referred the matter back to the Additional Collector, Gopalganj for deciding it afresh with further observation that whether pendency of Title Suit No. 114 of 1988 will have any impact on the present proceedings or not.

26. The Additional Collector, Gopalganj on remand vide an order dated 04.03.2009 held that since the lands were transferred by the then Mahanth in favour of the petitioners -private respondents herein after seeking permission from 'the Trust', the same has to be adjusted in the ceiling unit of the Math and the same has attained finality.

27. The Additional Collector, Gopalganj further recorded that the pendency of Title Suit No. 114 of 1988 will have no impact over the present proceedings as the suit relates to the rights, title and interests of the Math and further the private respondent nos. 7 to 8 herein have not been made party of the said suit.

28. The Additional Collector, Gopalganj thereafter, forwarded the records for confirmation to the Collector, Gopalganj who again remanded it back to the Additional Collector vide an order dated 11.01.2010.



29. Being aggrieved by the repeated action of the Collector, Gopalganj, the private respondents herein preferred CWJC No. 7960 of 2010 which was disposed of on 14.05.2010 giving liberty to them to avail remedy of revision under Section 32 of the Ceiling Act.

30. Accordingly, Revision No. 10 of 2010 was preferred before the Board of Revenue which was decided on 09.09.2010 and the matter was again remanded to the Collector, Gopalganj for passing a reasoned order.

31. The Collector, Gopalganj, heard the parties and vide an order dated 09.10.2012 rejected the claim of the respondent nos. 7 to 9 herein setting aside the order of the Additional Collector (ceiling), Gopalganj.

32. It was challenged in Ceiling Revision No. 04 of 2013 before the Board of Revenue. The same was dismissed on 29.08.2013.

33. Aggrieved, the petitioner-respondent no. 7 preferred B.L.T Case No. 769 of 2013 before 'the Tribunal'.

34. In the said case, notices were issued to 'the Trust' and the State who appeared and filed their respective replies.

35. The State which was opposite party no. 1 to 5



in their counter affidavit admitted that:

(i) the land in question was sold by the Mahanth after obtaining due permission from 'the Trust' which followed execution of registered sale deed in the year 1975 itself;

(ii) it further admitted that the petitioner- private respondent's name stand mutated in respect to these lands;

(iii) a Ceiling Case No. 01 of 1992-93 was initiated in which the lands alienated were erroneously clubbed with the lands of the Math which followed by gazette notification dated 01.01.1994 while new lands were allotted in the ceiling unit of the Math.

(iv) however, since dispute arose between Math and 'the Trust' regarding appointment of Mahanth, he was removed and the Collector, Gopalganj was made Administrator, who directed the Circle Officer, Barauli to manage and look after the property of the Math;

(v) the Circle Officer, Barauli in turn while auctioning the crops grown over the Math land also included the crops grown over the lands purchased by the petitioner which followed the demand by the petitioner to refund the auction money for the crop grown over his purchased land.

(vi) the counter affidavit further stated that the



claim now stands rejected by the Collector, Gopalganj in view of the fact that the Mahanth had not taken any permission/approval as required under Section 44 read with Section 28(2) (j) of the Bihar Hindu Religious Trust Act (hence for short 'the Act') as also the permission from the Collector as required under Section 5 (i) (ii) of the Ceiling Act is mandatory.

36. After much deliberation, 'the Trust' filed its reply in which it is/was averred that:

(i) Mahanth Kishore Das had sought permission to sell eight (8) '*Bighas*' of land for liquidating the loan borrowed by him and for meeting expenses, doing necessary repairs;

(ii) in pursuance thereof, 'the Trust' granted sanction for selling four (4) '*Bighas*' of land with a direction to utilize the sale proceeds to liquidate the mortgage debt so that the land mortgaged could be redeemed which was beneficial for the interest of the Math properties;

(iii) the sanction order was accorded to the Mahanth Kishore Das, who executed sale deed in favour of the petitioner-respondent no. 7 on 21.03.1975;

(iv) despite execution of the sale deed, petitioner- private respondent herein never came in possession



of the land as approval of the Board was not taken;

(v) further, Mahanth Ram Chandra Das neither deposited the consideration amount in the bank account nor utilized it for the purpose for which permission was granted;

(vi) 'the Trust' thus in its letter no. 6827 dated 06.12.1979 directed the successor Mahanth Ram Chandra Das for recovery of the said land as the sale was void in absence of approval by the District Judge.

37. 'The Tribunal' framed question for consideration which finds incorporated in paragraph 9 and is recorded herein below:-

(i) whether the transfers made by the Mahanth of the Math in favour of the petitioner will be deemed to be void *ab initio* as made in violation of Section 44 of the Bihar Religious Trust Act, 1950. read with Section 28(2)(j) of the Act?

(ii) whether on account of there being no sanction under Section 5(1)(ii) of the Ceiling Act, the transfer of the land in favour of the petitioner will be deemed to be void *ab initio* ?

(iii) whether the permission from the Board for the purpose of repaying the mortgage debt i.e. protecting one property of the trust under mortgage after selling, another



property of the trust amounts to conversion of one property of the trust into another property and for that approval/resolution of the Board by the concerned District Judge as required under Section 28(2)(i) of the Act, is required.

38. The stand taken by the petitioner-private respondents herein is/are that:

(i) 'the Trust' ' never made any objection, which is being raised now;

(ii) the Mahanth had sought permission which was granted;

(iii) in terms of the sanction order, the registered sale deed was executed;

(iv) once the registered sale deed was executed, the same has to be clubbed in the unit allotted to the Mahanth;

(v) in the permission order/sanction order by 'the Trust', no such requirement of approval/permission of the District Judge was incorporated;

(vi) it was further clarified that the permission is required only in the cases of conversion of lands, for example, if an agricultural land is going to be used for commercial purposes, in that case proper permission of the Board as also the approval of the District Judge is essential;



(vii) however, in the present case, it was not that the land which was transferred to the petitioner-private respondent herein was being used for any other purpose than agriculture and as such, the approval of the District Judge was not required;

(viii) it was the further case that whether permission is taken or not under Section 5(1) of the Ceiling unit. Section 9 of 'the Ceiling Act' clearly envisages that it has to be clubbed with the unit allotted to the land holder.

39. 'The Tribunal' after hearing the parties held that section 44 of 'the Act' provide jurisdiction to the Board to give previous sanction for transfer of immovable property of the religious trust. Further, Section 28(2) (j) only comes into picture when such transfer is against the terms of deed instrument against the wishes of the founder.

40. It further held that in the present case, there was nothing to show that the transfer done after the permission accorded by 'the Trust' was against the wishes of the founder.

41. 'The Tribunal' further held that in cases of simple transfer of immovable property for the benefit of 'the Trust' the same does not come under the purview of Section 44(2) and Section 28(2) (j) of 'the Act'.



42. It further held that initially the Additional Collector, (Ceiling) Gopalganj had taken the right decision by allotting the land purchased by the petitioner-private respondents in the unit of the Math and as such, the crops grown on its agricultural land could not have been auctioned by the Circle Officer, Barauli.

43. Further, the gazette notification published under Section 11(1) of the Ceiling Act though challenged by the land holder remained intact and not set aside by the High Court or any Superior Court and as such, the petitioner-private respondent had got right, title and interest over the land and were entitled for compensation amount which was illegally auctioned by the Circle Officer, Barauli and deposited in the Treasury.

44. 'The Tribunal' further held that instead of confirming the order of Additional Collector, (Ceiling) Gopalganj, the Collector, Gopalganj choose a different pathway on the aid and advice of 'the Trust' which had no role to play at that particular stage.

45. It thus held that in the process, 'the Trust' reopened the matter already settled long back, as the gazette notification as also the sale deed were never challenged by it



and still it managed to get the matter reopened. In that view of the matter, 'the Tribunal' held as follows:-

"I find that stand taken by the Bihar Hindu Religious Trust Board in its counter affidavit and also submission made on behalf of counsel representing the Bihar Hindu Religious Trust Board has no legal authority. Counsel for the State had not made any other submission except that it has given affirmation to the stand taken by the Bihar Hindu Religious Trust Board. In view of the discussions made above, I find that the orders passed by the Chairman-cum-Member Board of Revenue, Patna, Bihar, in Ceiling Revision No. 04 of 2013 and the order passed by the Collector, Gopalganj, in Ceding Case No. 2 of 2010 are fit to be set aside. The order passed by the Additional Collector, Gopalganj dated 03.10.2007, in Misc Case No. 26 of 2000 02 of 2005-06 is affirmed. The Collector, Gopalganj is directed to refund the amount claimed by the petitioner Le. Rs. 1,12,100/- One Lac Twelve thousand one hundred), after withdraw of it from the Government Treasury and be paid to the petitioner. The Collector, Gopalganj and the Circle Officer. Barauli are directed not to interfere with the management of the petitioner's land as it is not the land of the



Math and neither the Collector nor the Circle Officer have been authorized to manage its affair."

46. Thus, 'the Tribunal' allowed the B.L.T. Case No. 769 of 2013 vide an order dated 29.08.2013.

47. Aggrieved, 'the Trust' is now before this Court.

48. Heard the parties.

49. Learned Senior Counsel in course of argument concedes that the sanction was accorded by 'the Trust' to the then Mahanth for alienation of four (4) 'Bighas' of land in the year 1975 which followed the execution of registered sale deed in favour of the respondent nos 7 to 9. He however, submits that prior to alienation, the permission of the Collector under Section 5 (1) of the Ceiling Act was not taken.

50. The next contention is that in line with Section 44 (1) as also Section 28 (2) (j) of the Act it had to be approved earlier by the 3/4th of the Board and further by the District Judge which was not done. In the aforesaid background/submissions, this Court deems it appropriate to bring on record section 44 of the Act which relates to transfer of immovable property of a religious trust which read as follows:-

CHAPTER VII



**PROPERTY TRANSFER OF IMMOVABLE BORROWING
OF MONEY BY TRUSTEE PROPERTY AND**

44, Power to transfer immovable property of a religious trust.- (1) No transfer made by a trustee of any immovable property of a religious trust by way of sale, mortgage, gift or exchange or by way of lease for a term exceeding three years shall after the Board has been established under this Act, be valid unless made with the previous sanction of the Board.

(2) Subject to the provisions regarding conversion of trust property in clause (1) of sub-section (2) of section 38- ho transfer of any immovable property of religious trust by way of sale, mortgage, gift or exchange or by way of lease, shall be sanctioned by the Board against the terms of deed of instrument creating the trust, or in case where no deed or instrument creating the trust is available, against the wishes of the founder so far as they can be ascertained.

Comments and Case-law

[The powers of alienation of a Mahant in respect of the property of the Math are the same as are possessed by a Shebait in regard to Debutter Property. A Shebait and Mahant occupy exactly the same



position with regard to alienation of endowed properties. To an institution, like a Math, preservation of its prestige and To an institution, like a Math, preservation of its prestige and influence is no less necessary than preservation property. For example where an elephant is necessary for use during festival occasions, the Mahant can purchase an elephant even by borrowing money provided he acts prudently. The matter should be approached not from an absolute standard of necessity but from the point of view of what consideration would weigh in mind of a prudent manager. The question of necessity cannot be decided upon the analogy of other institutions. Sri Thakurji v Mathura Prasad, AIR 1941 Pat. 354.

When a Mahant after transferring one item of Math property later transferred the entire balance to another person, the possession of the first alienee would be adverse not from the date of death of the Mahant but from the date of the second. alienation, since such alienation would have the effect of a civil death-completely extinguishing the status of the Mahant. Ram Lagan v. Nandpal, AIR 1938 Pat. 143 1

This section strictly bars



transfer of immovable property by a religious trust in a given circumstances. Where the permission of the Board has not been obtained before the transfer, the transfer is invalid and the compromise sought to make the invalid transfer valid, the compromise is also not lawful even though the Board is a party to such compromise. Dhanushdhari Pd. Singh vs. Awadh Rai, 1967 BLJR 657

Right to religious office is in the nature of property. Hence, religious offices can be hereditary, and a female can also have the right to office of Shebaitship. Hadu Mohapatra vs. Radha Bewa, AIR 1983 Orissa 4.

An order passed against the alienees, of endowment property without bringing the legal representatives of one of the alienees who died during pendency of proceedings, can be set aside in a writ petition brought by the aforesaid legal representatives. Narayana Padhi vs. Executive Officer, AIR 1983 Orissa 6. In claim of perfection of title by adverse possession by lessee, such transfer being ab Initio void, Article 63 of Limitation Act, 1963 will be applicable and not Article 96. Chintamani Sahoo vs. Commissioner, AIR 1983 Orissa 205.



A suit filed by a worshipper of a Hindu temple, challenging the alienation made by the Shebait, on the ground that the Shebait was acting adversely to the interest of the deity is maintainable. Mr. Pachiya Devi vs. Bishundeo, Prasad Singh, 1985PLJR 989. See also Mahajan Mahto vs. Sri Gopi Nath Jee, 1985 PLJR 713: AIR 1986 Pat. 3.

Where the property belonging to a religious institution is not sold for legal necessity and for the benefit of the idol, the sale of such property will not be binding on the religious institution. Puran Singh vs. Ajaib Singh, AIR 1991 P & H. 247.

*The Managing Committee of a religious institution cannot exercise larger power of alienation of the property of the religious institution than that of a "shebait" *ibid*]" It also finds essential to bring on record section 28 (11) (1) which reads as follows:-*

"to sanction on the application of trustee or any other person interested in a religious trust, the conversion of any property of such trust into another property, if the Board is satisfied that such conversion is beneficial for the said trust;

Provided that no such conversion shall be sanctioned unless the



Board so resolves by majority which includes at least three fourth of its members and resolution of the Board is approved by the District Judge;"
(underline mine)

51. It is also essential to incorporate Section 28
(2) (j) of 'the Act' which read as follows:-

Chapter – V

POWER AND DUTIES OF THE BOARD

28 (2) (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 -*

(j) to sanction on the application of trustee or any other person interested in a religious trust, the conversion of any property of such trust into another property, if the Board is satisfied that such conversion beneficial for the said trust;

Provided that no such conversion shall be sanctioned unless the Board so resolves by majority which includes at least three fourth of its members and resolution of the Board is approved by the District Judge;

52. Learned Senior Counsel submits that in



absence of the approval of the District Judge, the permission accorded by 'the trust' in 1975 becomes redundant and it has every right to get the land back. In that background, there was no error on the part of the Circle Officer, Barauli to auction the crops grown on the land of the private respondent nos 7 to 9 and get it deposited in the treasury,

53. He thus justified the orders passed by the Collector, Gopalganj as also the Board of Revenue and further submitted that 'the Tribunal' erred in allowing the petition of the private respondent nos. 7 to 9.

54. It is his submission that 'the Tribunal' further erred in holding that when it was simple transfer of immovable property for the benefit of 'the trust', section 44(2) as also Section 28 (2) (j) of the Act will not attract.

55. In sum and substance, learned Senior counsel for 'the petitioner-Trust' submits that the finding that the approval of the District Judge is/are not required is an error and as such, the order needs to be set aside.

56. Mr. Nagendra Rai, learned counsel for the respondent nos. 7 to 9, on the other hand, echoed the findings of 'the Tribunal' and he once again took this Court Section 44(2) as also Section 28 (2) (j) of the Act to show that since there is no



conversion of the land, as in this case, there was no requirement of an approval of the District Judge.

57. It is his further contention that while sanctioning the sale of four (4) 'Bighas' of land in the year 1975, there was no such incorporation by 'the Trust' in the order that this sanction is subject to the approval of the District Judge.

58. He submits that in any case, unless there is conversion of land, the permission of the District Judge is not required. He as such submits that the Circle Officer, Barauli erred in auctioning the crops grown on the agricultural land of the respondent nos. 7 to 9 and depositing in the treasury. As such, he prayed for dismissal of the present writ petition.

59. Having gone through the facts of the case, the documents on record as also the submissions put forward by the learned counsels, the following facts emerge:-

(i) the then Mahanth sought permission for alienation of eight (8) 'Bighas' of land for redeeming the mortgage as also for doing necessary repairs;

(ii) the same was granted by 'the Trust' in turn with respect to sell of four (4) 'bighas' of the Math land;

(iii) the contention of the learned counsel for the respondent nos. 7 to 9 not rebutted by the learned Senior



counsel for the petitioner becomes valid that the said sanction order did not envisage that the alienation of land can be done only after the approval of the District Judge;

(iv) it was a case of simple alienation and not conversion of land;

(v) subsequently, the then Mahanth sold the land to the family of the respondent nos. 7 to 9 in the year 1975 which followed valid mutation;

(vi) further according to the section 9 of 'the Ceiling Act' any land held by the landholder exceeding the ceiling area, it shall have, subject to the provisions of the sub-sections (2) (3) (4) and other provisions of this act the option to select within the period prescribed in sub-sections (3) (10), the land which is desired to retain in accordance that the provisions of section 5;

(vii) the said section 9 of the Ceiling Act further incorporates Sub-section 1 of Section 5. It further incorporates in sub-section 2 that any land held by the land holders includes land transferred by him in accordance with or in contravention of the provision of Clause (2) of sub-section 1 of sub-section 5, to the extent of ceiling area admissible to the land holder be deemed to have been selected by him for retention within the



ceiling area.

60. The sum and substance of section 9 of the ceiling act is very clear: irrespective of whether a permission has been taken/granted or not; the land sold by the land holder will be put in the unit allotted to him/her while the rest of the land will be declared surplus.

61. Thus, the contention of the Collector, Gopalganj that no permission was taken before the alienation of land, is fit to be rejected as in any case, whether permission taken or not, the land has to be clubbed along with the land allotted to the land holder to the extent he/she is entitled to.

62. So far as the contention of the learned Senior Counsel that the approval of the District Judge was not taken before the alienation, the said contention again is fit to be rejected on the following grounds:-

(i) it was not a case of conversion but simple alienation of land;

(ii) 'the Tribunal' rightly pointed out that there is/was no conversion of land and as such no such approval was required;

(iii) it is further not the case of 'the Trust' that the sanction letter of 1975 incorporated the essentiality of the



permission of the District Judge for the alienation of land;

(iv) it is again not the case of 'the Trust' that having found that the alienation has been made illegally, the Board in its meeting attended by 3/4th members annulled the sanction/permission granted to the Math in 1975.

(v) thus, the Circle Officer, Barauli had no authority to include the crops grown on agricultural land of the respondents and auction the same.

63. Learned Senior Counsel has relied upon a decision of the Division Bench in the case of **Dhanusdhari Prasad Singh Vs. Awadh Rai** reported in **1967 B.L.J.R** and the relevant part is in paragraph-9 which read as follows :-

Learned counsel appearing for the defendant 1st party transferee urged that the fact that the Board was a party to the compromise should be taken as giving sanction to the transaction of sale by the defendant second party in favour of defendant 1st party. Although Sec. 44 of the Act, according to him, enjoins upon a previous sanction of the Board, the sanction gives subsequent to the transaction can be taken as a good ratification of the transaction itself. There is no substance in this argument for two reasons. When the statute provides for a previous sanction, any



sanction later than the transaction itself will not be a sanction in accordance with the provisions of Sec. 44 of the Act. The purpose behind this provision is to make safeguard against alienation of a public trust property. Secondly, as stated in the compromise itself, the alienation of the suit property was in the nature of conversion into another property. Sec. 28 (2) (J) of the Act provides that one of the powers and duties of the Board is to sanction on the application of a trustee or any other person interested in a religious trust, the conversion of any property of such trust into another property, if the Board is satisfied that such conversion is beneficial for the said trust, provided that no such conversion shall be sanctioned unless the Board so resolves by a majority which includes at least three-fourths of its members and the resolution of the Board is approved by the District Judge. The previous sanction contemplated under Sec. 44 of the Act could have been given for conversion of a part of the trust properties by the Board, only after there was a resolution by a majority which included at least three-fourths of its members, and that resolution was approved by the District Judge. The Board joining a compromise at a later stage cannot fulfil the other two conditions, namely, the resolution



by a majority of at least three-fourths of its members and the approval of the District Judge. As the impugned transaction was a case of conversion, it was incumbent upon the defendant 2nd party, the trustee, to obtain sanction of the Board, in the manner indicated in clause (j) of sub-Sec. (2) Sec. 28 of the Act before he entered into the transaction with the defendant 1st party. Failure in that respect cannot be cured by a compromise of the present nature entered into with the Board long after the transaction.”

(underline mine)

64. A bare perusal of the said order shows that in that case:

(i) the previous sanction of ‘the Trust’ was not there before the transaction took place;

(ii) it was a case of conversion and as such the sanction of ‘the Trust’ in the manner indicated in Section 28(2) (j) of the Act was essential which includes approval by 3rd/4th of its member as also by approval of the District Judge.

(iii) however, in the present case, there was a previous sanction related to the alienation of land which was not for the purpose of conversion and as such, the order of the Patna High Court in the case of **Dhanusdhari Prasad Singh**



Vs. Awadh Rai (supra) does not come to the rescue of the petitioner.

65. Taking into account the aforesaid facts, this Court do not find any error in the reasoned order dated 15.06.2015 passed by the Bihar Land Tribunal, Patna in B.L.T. Case No. 769 of 2013 (Annexure-4 to the writ petition).

66. The writ petition fails and is accordingly dismissed.

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	18.07.2023
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