

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.230 of 2019

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1. Baba Bhikham Das Thakurwadi Nyas Samiti through its Manager Ram Narayan Parihast, Badi Path, Bakarganj, P.S. Kadamkuan, District-Patna-4.
 2. Ram Narayan Parihast, Manager, Baba Bhikham Das Thakurwadi Nyas Samiti, Bari Path, Bakarganj, P.S. Kadamkuan, District-Patna-4.

... .. Petitioners

Versus

1. Mahant Jaynarayan Das, Substituted Mahant, Baba Bhikham Das Thakurwadi Nyas Samiti, Bari Path, Bakarganj, P.S. Kadamkuan, District-Patna-4.
2. Mahant Vimal Das, Substituted Upmahant, Baba Bhikham Das Thakurwadi Nyas Samiti, Bari Path, Bakarganj, P.S. Kadamkuan, District-Patna-4. Both r/o Village Tilwah P.O.&P.S. Naubatpur, District- Patna.
3. The Bihar State Board of Religious Trust, through its Administrator, Kavi Raman Path, P.S. Kotwali, District-Patna.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Ganpati Trivedi, Sr. Advocate
	:	Mr. Ashutosh Singh, Advocate
For the Opposite Parties	:	Mr. Jitendra Kishore Verma, Advocate
	:	Mr. Ravi Raj, Advocate
	:	Ms. Sweta Raj, Advocate
For the Opposite Party No. 3	:	Mr. Shekhar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
C.A.V. ORDER

18 23-03-2023 Heard Mr. Ganpati Trivedi, learned senior counsel for the petitioners, Mr. Jitendra Kishore Verma, learned counsel for the opposite party and Mr. Shekhar Singh, learned counsel for the opposite party No. 3.

2. This Civil Revision Application is directed against the order dated 23.10.2019, passed in Case No. – Civil Miscellaneous No. - 78 of 2019 (in Execution Case No. 01 of 2000) by the learned Court of Additional District Judge, VIIth,



Patna, which was filed by the petitioner under Order XXI Rule 97 of the Code of Civil Procedure, whereby, the said Civil Miscellaneous Case has been dismissed on the ground that petitioner has no locus to file the Miscellaneous Case and as such is not maintainable and the said Miscellaneous Case has been rejected at the stage of “Admission”.

3. Mr. Ganpati Trivedi, learned senior counsel for the petitioners submits that Baba Bhikham Das Thakurwadi is a religious Trust, situated at Bari Path, Kadamkuan in the District of Patna, registered under Bihar Religious Hindu Trust Act, 1950, having its Reg. No. 935. It is contended that several dispute arose relating to the right of management of the properties of the said Trust and also *Mahantship* of the said Trust. It is admitted fact that Ram Krishna Das was the *Mahant* of the said *Thakurwadi*, who died on 09.02.1961. Two Wills claimed to be executed by Mahant Ram Krishna Das on 21.12.1952 and 02.08.1960 in favour of Ram Rajeswar Das as well as Chandra Mani Das respectively.

4. After the death of said Mahant Ram Krishna Das a dispute arose regarding the *Mahantship* of the said Thakurwadi. Ram Rajeshwar Das filed Succession Case No. 188 of 1961 on the basis of Will dated 21.12.1952, whereas Chandra Mani Das



filed a case for letter of administration on the basis of Will executed in his favour on 02.08.1960, which was registered as L.A. Case No. 17 of 1963. The L.A. Case No. 17 of 1963 was contested by Ram Rajeshwar Das and as a result, the same was converted into Title Suit No. 22 of 1966.

5. Both the Succession Case No. 188 of 1961 and Title Suit No. 22 of 1966 were heard analogously. On adjudication, Succession Case No. 188 of 1961 was allowed in favour of Ram Rajeshwar Das on contest whereas Title Suit No. 22 of 1966 was dismissed and grant of letter of administration in favour of Chandra Mani Das was refused. The matter was agitated by Chandra Mani Das upto Hon'ble Supreme Court, which stood dismissed. Ultimately, Ram Rajeshwar Das was found to be legally appointed *Mahant* of *Baba Bhikham Das Thakurwadi* by his *Guru Mahant* namely Ram Krishan Das. Thereafter, Ram Rajeshwar Das filed Execution Case No. 01 of 2000 for executing the decree passed in his favour against Chandra Mani Das and during the pendency of the said Execution Case No. 01 of 2000, Ram Rajeshwar Das died on 01.01.2003, whereupon, Mahant Rama Kant Das claiming himself to be *CHELA* on the basis of his alleged Will executed by Ram Rajeshwar Das, filed application for being substituted



in his place. It is relevant to mention here that Chandra Mani Das also died on 15.12.2004, whereupon, Vimal Das, Jay Narayan Das and Sarvesh Das had also filed an application for being substituted in place of Ram Rajeshwar Das and the said execution remained pending for adjudication. The said Vimal Das filed Probate Case No. 65 of 2003 for being declared successor of Ram Rajeshwar Das on the strength of Will, executed by Ram Rajeshwar Das. Further, Mahant Jay Narayan Das also filed Probate Case No. 46 of 2005 on the basis of another Will executed by Ram Rajeshwar Das. It is mentioned that earlier the Hindu Religious Trust Board had appointed Ram Rajeshwar Das as *Mahant* on 15.07.1996. The said order was challenged before the District Judge, which was affirmed by order dated 05.02.2001, passed in Misc. Case No. 56 of 1997.

6. Against the said order Chandra Mani Das preferred Miscellaneous Appeal bearing M.A. No. 205 of 2001, which was finally disposed of by order dated 11.04.2007 by this Hon'ble Court, allowing the Miscellaneous Appeal and directing the Board to appoint a temporary trustee as required under Section 33 of the Bihar Religious Hindu Trust Board Act, 1950 and further directed that if dispute is not resolved to frame scheme for the administration of the Trust then in that event a



committee be constituted.

7. In compliance of order of this Court, Hon'ble Mr. Justice Uday Sinha was appointed as temporary trustee on 25.04.2007. Since the dispute with regard to *Mahantship* of the said Trust could not be resolved, accordingly, a committee under notification dated 29.05.2008 invoking Section 32 of the said Act was constituted.

8. After the death of Ram Rajeshwar Das, a petition for substitution of his legal representative was filed by Rama Kant Das and his name was substituted in his place in Execution Case No. 01 of 2000 *vide* order dated 20.02.2008 and by getting an order of delivery of possession, succeeded in dispossessing the Trust committee on 01.09.2008 with the help of Police.

9. The Board moved before this Hon'ble Court in Civil Revision No. 1530 of 2008, against the said order dated 20.02.2008, whereby an order was passed on 15.12.2008, directing the Executing Court to pass an order to deal with the Trust properties strictly in terms of the previous order passed by this Hon'ble Court, whereupon, the Executing Court by its order dated 26.09.2008 had directed Rama Kant Das to restore possession of the properties of the said Trust and *Thakurwadi* to the Trust Committee, headed by Hon'ble Mr. Justice Uday



Sinha. Ultimately, the possession of the Trust property and *Thakurwadi* was restored in the hands of Trust Committee.

10. In view of the order dated 15.12.2008, Rama Kant Das moved before Hon'ble Supreme Court and the Hon'ble Supreme Court after hearing the parties including the Hindu Religious Trust Board by its order dated 10.01.2014, passed in Civil Appeal No. 246-245 of 2014 directed the Executing Court to hold an enquiry under Order XXII Rule 5 of the Code of Civil Procedure to decide as to whether Ram Krishana Das is the legal heir of the deceased Mahant Ram Rajeshwar Das or not.

11. In compliance of order of Hon'ble Supreme Court the learned Additional District Judge VII, Patna on enquiry arrived at the conclusion that Rama Kant Das was not the legal representative of decree holder namely Mahant Ram Rajeshwar Das. Since then, *Baba Bhikham Das Thakurwadi* has been administered after framing a scheme by the Board through a committee known as "*Baba Bhikham Das Thakurwadi Nyas Samiti*", constituted under Section 32 of the said Act for five years. After five years of the said Trust Committee the Board under its notification dated 28.05.2013 appointed Hon'ble Justice Mrs. Mridula Mishra as temporary trustee under Section



33 of the said Act.

12. Learned senior counsel for the petitioners further contended that dispute of *Mahantship* was not settled and was sub-judice in Title Suit No. 02 of 2007 and Title Suit No. 11 of 2009. After lapse of one year the president of Board under notification dated 06.01.2014 reconstituted the five members Trust Committee under the chairmanship of Hon'ble Justice Mrs. Mridula Mishra. It is further contended that both the Title Suit No. 02 of 2007 and Title Suit No. 11 of 2009 were pending, a compromise petition was filed by Vimal Das and Jay Narayan Das in their respective suits. The said compromise petition dated 04.04.2017 was allowed on 13.04.2017 and disposed of both the suits in terms of the compromise petition. It is also submitted that on the basis of said compromise petition Mahant Jay Narayan Das filed an application in Execution Case No. 01 of 2000 for substituting him in place of Mahant Ram Rajeshwar Das, which was allowed on 07.05.2018 and substituted Mahant Jay Narayan Das as "*Mahant*" and Mahant Vimal Das as "*Up-Mahant*" in place of Mahant Ram Rajeshwar Das. It is also contended that Religious Board has assailed the said compromise decree before this Hon'ble Court in First Appeal No. 125 of 2018 and First Appeal No. 126 of 2018, which is



pending for adjudication before this Hon'ble Court.

13. It is pertinent to mention here that the letter addressed to the *Sachiv* of the relevant Trust Board by the A.D.J. VII, Patna has been written on 30.08.2018 for handing over the charge of *Baba Bhikham Das Thakurwadi* to Mahant Jay Narayan Das as “*Mahant*” and Mahant Vimal Das as “*Up-Mahant*”.

14. It is pertinent to mention that the letter dated 30.08.2018 is addressed to *Sachiv*, Bihar State Religious Trust Board, Patna for handing over the charge to the aforesaid persons by Additional District and Sessions Judge VIIth, Patna.

15. Learned counsel for the petitioner submits that petitioner was not aware about the letter dated 30.08.2018, addressed to the Bihar State Religious Trust Board, issued by the Executing Court, soon after getting the information the petitioner filed Miscellaneous Case No. 78 of 2019 in Execution Case No. 01 of 2000 before the Execution Court under order XXI Rule 97 of the Code of Civil Procedure.

16. On the other hand Mr. Jitendra Kishore Verma, learned counsel appearing on behalf of Opposite Party No. 1 argued that in view of order passed by the Hon'ble Supreme Court on 10.01.2014 in Civil Appeal No. 264-265 of 2014, the



substitution matter under Order XXII, Rule 5 of the Code of Civil Procedure has to be decided within two months. It is further submitted that the Hon'ble Supreme Court further observed that it is not necessary to hear the Trust Committee in the inquiry under Order XXII, Rule 5 of the Code of Civil Procedure. In compliance of order of Hon'ble Supreme Court the inquiry was made by the lower court in Execution Case and the claim of Rama Kant Das was rejected. The claim of Mahant Jay Narayan Das and Mahant Vimal Das was kept open in view of pendency of two probated cases converted to title suit. Thereafter, a compromise decree entered into in the two probated cases converted to Title Suit No. 11 of 2009 and 02 of 2007 and both the suits were disposed of in terms of compromise dated 17.02.2017 and the same was accepted by order dated 14.04.2017. In terms of the said compromise it was agreed between the parties that Mahant Jay Narayan Das will function as *Mahant* and Mahant Vimal Das will function as *Up-Mahant* of *Baba Bhikham Das Samiti Thakurwadi* and its branches all over India. A petition was filed by opposite party Nos. 1 and 2 namely Mahant Jay Narayan Das and Mahant Vimal Das for substituting them in place of deceased decree holder Mahant Ram Rajeshwar Das which was allowed on



07.05.2018 by the execution court on the basis of decision on common compromise decree dated 13.04.2017 passed in Title Suit No. 02 of 2007 and Title Suit No. 11 of 2009. Learned counsel for the opposite party further submits that the said order attained finality having not been challenged by the Nyas Samiti for more than four years.

17. Learned counsel further submits that on 17.07.2018 the Executing Court, in Execution Case No. 01 of 2000 directed the *Sachiv*, Bihar State Religious Trust Board, Patna to hand over the charge of *Thakurwadi* and office of *Mahant* to the substituted decree holder Mahant Jay Narayan Das and Mahant Vimal Das then thereafter, *Baba Bhikham Das Thakurwadi Nyas Samiti* filed a Miscellaneous Case No. 78 of 2019 before the Executing Court under Order XXI, Rule 97 of the Code of Civil Procedure seeking to obstruct the execution of the decree and prayed that the substituted decree holders have no right title and interest in *Baba Bhikham Das Samiti Thakurwadi* and its properties on the basis of collusive decree obtained in Title Suit No. 11 of 2009 arising out of probate cases through compromise and the decree of probate court as is nullity and further sought injunction against the substituted decree holder from executing the decree in question. It is further



contended that all the relief sought for are in the negative terms directed against these opposite parties who are substituted decree holders. However, no positive relief by the *Nyas Samiti* claiming right title or interest in the *Nyas Samiti* has been claimed nor any declaration of right of *Nyas Samiti* to continue to manage the affairs of *Baba Bhikham Das Samiti Thakurwadi* and its *Mahantship* or its properties have been claimed, opposite party Nos. 1 and 2 filed their objection to the aforesaid Miscellaneous Case raising the ground of maintainability of the Miscellaneous Case. The Executing Court after hearing and considering objection filed by these opposite parties has passed reasoned order. The lower court held that the *Nyas Samiti* (Petitioner) of Miscellaneous Case has no locus to file the Miscellaneous Case under Order XXI Rule 97 of the Code of Civil Procedure, which according to the Court is not maintainable and rejected the same by the impugned order. It is further argued that Hon'ble Court had only directed the Board to constitute a committee and/or appoint the competent person to look after the management of the *Thakurwadi* until the dispute regarding the *Mahantship* of the aforesaid *Thakurwadi* is resolved and the said dispute has already been resolved by passing a compromise decree in Title Suit No. 02 of 2007 and



Title Suit No.11 of 2009 on 13.04.2017. Therefore, the said *Nyas Samiti* has no *locus* to file the said Miscellaneous Case. It is further contended that the Bihar Hindu Religious Trust Board has preferred two first appeals bearing First Appeal No. 125 of 2018 and 126 of 2018 against the compromise decree dated 13.04.2017 passed in Title Suit No. 02 of 2007 and Title Suit No. 11 of 2009 which is pending for final adjudication.

18. It is clear that F.A. No. 12 of 2018 and F.A. No. 126 of 2018 relates against the compromise decree dated 13.04.2017, filed by Bihar State Board of Religious Trust. It is apparent that the *Nyas Samiti* of *Baba Bhikham Das Thakurwadi*, which is constituted by Hindu Religious Trust Board, Bihar, Patna is in sum and substance challenging the compromise decree by way of filing application under Order XXI, Rule 97 of Civil Procedure Code numbered as Miscellaneous Case No. 78 of 2009 in Execution Case No. 01 of 2000. It is further argued that the *Nyas samiti* was constituted only as a stop gap arrangement for the time being and temporarily till dispute regarding the office of *Mahantship* is decided amongst the rivals claim/claimants and the petitioner's *Samiti* has no permanent or legal right nor has any locus to hold the office of *Mahant* and there is no provision in the Bihar



Hindu Religious Trust Act, 1950 vesting the Board or anybody with the power to act or appoint somebody as regular *Mahant* and under Section 33 in event of vacancy only such power for one year could be exercised temporarily. Neither the Board nor the *Nyas Samiti* nor any other person can be appointed as *Mahant*. The Board has no role or authority in the matter of appointment of regular *Mahant* of a religious Trust. The *Mahantship* has to be governed by the rule of succession to the office of *Mahantship* or by custom or by Trust deed or by Will of previous *Mahant* and therefore Board or Samiti has no role to play in the appointment of permanent *Mahant* and thus they have no locus to question as to who would be *Mahant*. Therefore, learned executing court while holding in the impugned order that the petitioner's committee was to function temporarily till the dispute is decided has rightly held that the petitioner's *Samiti* has no locus to obstruct execution of the decree by raising the point that substituted *Mahant* cannot be substituted as *Mahant* and it cannot question the legality thereof especially when the order of substitution dated 07.05.2018 is not challenged. The Board has only role in appointment of some competent person temporarily for a maximum period of one year in the event of vacancy in the office until a *Mahant* is



regularly appointed on the basis of Trust deed, custom or Will etc. The role of religious Trust Board only comes into play after appointment of *Mahant* to ensure that Trust property is managed properly and in case of complaint mis-management etc., it can take action against *Mahant*. It is pointed out by the opposite party that the delivery of possession in Execution Case No. 01 of 2000 has already been effected in favour of the substituted decree holders (opposite party Nos. 1 and 2) on 12.02.2020 and as such the Miscellaneous Case No. 78 of 2009 has even otherwise become infructuous.

19. From the entire gamut of the case, it is categorical that *Nyas Samiti* by filing petition under Order 21 Rule 97 of the Civil Procedure Code has raised objection vide Miscellaneous Case No. 78 of 2019 arising out of Execution Case No. 01 of 2000. The issue involved in the instant matter is to decide as to whether *Nyas Samiti* is justified and has locus to file petition under Order 21 Rule 97 of the Civil Procedure Code as the *Nyas Samiti* was constituted under Section 33 of the Bihar Religious Trust Act, 1950, as a stop gap arrangement. Though the period of five years was mentioned in the order dated 06.01.2014 of the Bihar Religious Trust Board and the *Nyas Samiti* operated from 01.01.2004 itself and the life of *Nyas Samiti* was for a period of



five years, the same expired on 01.01.2019. The said fact has remained uncontroverted and even otherwise, the *Nyas Samiti* was constituted under Section 33 of the Hindu Religious Trust Act.

20. The compromise in Title Suit No. 02 of 2007 and Title Suit No. 11 of 2009 settled the dispute of *Mahantship* between Mahant Vimal Das and Mahant Jay Narayan Das vide compromise decree dated 13.04.2017 whereby *Mahant Jay Narayan Das* was declared *Mahant* of the said Trust and *Mahant Vimal Das* was conferred *Up-mahantship*. Hence, the dispute came to an end. However, the Bihar Religious Trust Board has challenged the compromise decree dated 13.04.2017 by filing First Appeal No. 125 of 2018 and First Appeal No. 126 of 2018. However, the said steps of the *Nyas Samiti* and the pendency of the appeal shall have no bearing on the issue of *Mahantship* and to wit the matter it is apparent that there was no *Will* in favour of the *Nyas Samiti* nor the same could have legally existed.

21. *Nyas Samiti* challenged the order dated 23.10.2019 passed by the Executing Court i.e., the Additional District Judge, 7th, Patna. The contention of the *Nyas Samiti* is that the Executing Court dismissed the petition of the *Nyas Samiti*



without going into the merits of the case and in a very cavalier manner.

22. The *Nyas Samiti* contended that the Apex Court had observed that it was not necessary to hear the *Nyas Samiti* with an intention to expedite the enquiry and that was limited to enquiry under Order 22 Rule 5 of the Civil Procedure Code and relied upon the decision in the case of ***Official Trustee, West Bengal and others Vs. Sachindra Nath Chatterjee*** reported in ***AIR 1969 SC 823*** at page 826, wherein, it has been held that if the order passed by the Court does not have jurisdiction over the subject matter, the judgment is a nullity in the eyes of law. Further, in the case of ***Kiran Singh and others Vs. Chaman Paswan and others*** reported in ***AIR 1954 SC 340*** it is held that invalidity of such order could be set up whenever and wherever it is sought to be enforced or relied even at the “stage of execution” and even in collateral proceeding. In the case of ***A.E.G. Carapiet Vs. A. Y. Derderian*** reported in ***AIR 1961 Calcutta 359***, while dealing with the power in a probate or an amended probate, it has been held that a Court of probate is said to be a Court of conscience.

23. On the other hand, learned counsel for the opposite parties supported his argument on the basis of the decision in the



case of ***Bool Chand (D) Tr. Lrs. and others Vs. Rabia and others*** reported in ***(2016) 14 SCC 270*** and relied upon para 5 and 12 where it has been categorically laid down that the Court cannot be oblivious of frivolous objection being filed after a decree is passed in a long drawn proceeding. Attempt to deprive the decree-holder of the benefit of such decree should be discouraged. In the instant case, Succession Case No. 188 of 1961 was decided on 28.05.1977 and affirmed by a Division Bench of this Court *vide* judgment dated 11.11.1998 and finally, Execution Case No. 01 of 2000 was filed and, therefore, it is, undoubtedly, a protracted litigation. Further, in the case of ***Kanhaiya Vs. Jodha Ram*** reported in ***(2019) 20 SCC 227*** paragraph 14 and 15, the Hon'ble Supreme Court while dealing with objection at instance of agreement to sale has held that as the agreement to sale does not confer any right, title and interest to the property, there is no locus to the objector to obstruct execution of the decree. Further, in the case of ***Sriram Housing Finance and Investment India Ltd. Vs. Omesh Mishra Memorial Charitable Trust*** reported in ***2022 (5) BLJ 98-SC*** relevant at paragraph no. 15, it has been held that petition under Order 21 Rule 97 Civil Procedure Code is not maintainable at the instance of the petitioner, who is, undisputedly, not a decree-



holder, especially when the petitioner has not even asserted his legal right.

24. From the above discussions, it comes to light that *Nyas Samiti* has no right, title and interest in the property and in any case, the *Nyas Samiti* could not be appointed as *Mahant* on regular basis. Once the dispute got settled, the role of *Nyas Samiti* came to an end and, therefore, objection raised by the *Nyas Samiti* has rightly been rejected by the learned Executing Court that *Nyas Samiti* has no locus to maintain the miscellaneous case.

25. In any way of the matter, I do not find any illegality or gross jurisdictional error in the impugned order for interference by this Court.

26. This Civil Revision application is accordingly dismissed.

(Khatim Reza, J)

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