

**(2004) 05 JH CK 0008**

**Jharkhand High Court**

**Case No:** Writ Petition (C) No. 916 of 2003

Bharat Varshiya Digambar Jain  
Tirth Kshetriya Committee

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision:** May 14, 2004

**Acts Referred:**

- Treasure Trove Act, 1878 - Section 20, 4, 5, 7

**Citation:** (2004) 3 JCR 474

**Hon'ble Judges:** P.K. Balasubramanyan, C.J; S.J. Mukhopadhaya, J

**Bench:** Division Bench

**Advocate:** Tara Kant Jha and Ram Balak Mahato and S.P. Baxi, J.P. Sinha, M.K. Roy, R. Kumari, N. Prasad, P.K. Prasad, R.N. Sahay, R. Lala, S.K. Deo and R. Prasad, for the Appellant; B.S. Lal, AAG, for the Respondent

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### **Judgement**

P.K. Balasubramanyan, C.J.

19 statuettes were recovered from a property presently in the district of Giridih. The finder is said to be the Jain Swetamber Society, Madhuban. The recovered statuettes constituted treasure within the meaning of the Indian Treasure Trove Act, 1877 since the said Act defined treasure as meaning anything of any value hidden in the soil or in anything affixed thereto. u/s 4 of the Act, the finder of treasure of a value exceeding Rs. 10/- has an obligation to give a notice to the Collector in writing of the nature and amount or the approximate value of the treasure, of the place in which it was found and the date of finding. The finder had also an obligation either to deposit the treasure in the nearest Government Treasury or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as the Collector may from time to time require. The finder, the Swetamber Society, failed in the duty to give a notice u/s 4 of the Act of finding the statuettes. But another group, known as the Bharat Varshiya Digambar Jain Tirth Kshetriya Committee, herein after referred to as the Digamber Committee filed a petition

before the Collector informing him of the excavation and the discovery of the statuettes. It was prayed for in the application filed by the Digambar Committee that an inquiry be held in terms of the Act and to pass, appropriate orders regarding the treasure. That notice on the petition was numbered as M.C. No. 25 of 2000. The Collector issued a notice to the finder, the Swetamber Society and fixed 7.12.2000 as the date for showing cause against the action being taken. He also issued a general notice. Notice was also given to the complainant, the Digambar Society Committee. The Swetamber Society, on receipt of the notice, filed an objection or show cause. It was stated that the statuettes were found, while digging near the Jain Temple, but inside the property belonging to the Society, and that out of the 19 statuettes recovered, one was broken while being excavated, but there was no offer by the Swetamber Society in its objection to furnish security for the production of the statuettes when call upon to do so or to deposit the same in the treasury as contemplated by Section 4 of the Act.

2. The Swetamber Society had a case that on the recovery of the statuettes, the Collector was informed, that the statuettes were put in a box and placed in a locked room in the premises of their temple awaiting further orders from the Collector. Meanwhile on 18.3.2001, the Digambar Committee filed a petition before the Collector praying that the statuettes be kept in safe custody pending adjudication. On 19.11.2001, the Collector issued a direction to the Circle Officer, Pirtand, Giridih, to keep the statuettes in a sealed box and deposit the box in the Government treasury. Neither the Circle Officer, Pirtand, nor the Addl. Advocate General appearing on behalf of the authorities and the State, has bothered to inform the Court whether the Circle Officer had obeyed the direction of the Collector dated 19.11.2001 and taken custody of the statuettes, placed them in a sealed box and deposited the box in the treasury. We may notice here that this was in spite of our issuing notice to the Circle Officer through his counsel on 12.3.2004 as to why we should not comment on the conduct of the Circle Officer, Pirtand, Giridih, subsequent to the issue of the above order by the Collector.

3. Twenty-six days after the Collector directed the Circle Officer to take the statuettes into custody and keep them safe in the treasury, the Swetamber Society purported to file a revision on 16.12.2002 before the Commissioner, North Chotanagpur Division, Hazaribagh, u/s 76 of the Bihar Practice and Procedure Manual. On 7/1.2003, the Commissioner heard the parties and on 25.1.2003 he purported to quash the entire proceedings in the Court of the Deputy Commissioner, Giridih in M.C. No. 25 of 2000. The ground stated was that the Collector had not published a general notification in terms of Section 5 of the Act before passing the order for interim protection of the treasure. It is to be noted that he quashed the entire proceeding and not the interim order, which was presumably in challenge before him. This order of the Commissioner dated 25.1.2003 is challenged in WP (C) No. 916 of 2003.

4. Before us, Mr. Tara Kant Jha, who appeared for the Swetamber Society, respondent 4 in WP (C) No. 916 of 2003 when confronted with the argument that the revision was not maintainable, fairly submitted that the revision purported to have been filed u/s 76 of the Bihar Practice and Procedure Manual before the Commissioner was not maintainable. Obviously, the effect of that concession is that the order of the Commissioner, Hazaribagh, who quashed the proceedings before the Collector, in Misc. case No. 25 of 2000 became one without jurisdiction apart from other illegalities we may presently advert to. But Mr. Tara Kant Jha, Senior Counsel, submitted that the Swetamber Society in the circumstances has filed WP No. 4820 of 2003 challenging the very initiation of proceedings by the Collector and the order of the Collector dated 19.11.2001. Consequently, it is necessary for this Court to consider the legality and propriety of the action of the Collector himself, irrespective of what has been decided by the Commissioner in the Revision.

5. But before proceeding to consider the relevant aspects, we think it proper to advert to a few other facts tending to demonstrate an attempt to over-reach the orders of this Court. The writ petition, WP No. 916 of 2003 was filed on 17.2.2003 by the Digamber Committee challenging the order of the Commissioner dated 25.1.2003. That writ petition came up before the Court for orders on 20.2.2003. A learned Single Judge (one of us) while issuing notice to the respondents in the writ petition and directing the case to be placed for admission on 14.4.2003, ordered that until further orders, the operation of the order dated 25.1.2003 passed in Giridih Misc. Revision No. 126 of 2002 shall remain stayed and that it will be open to the concerned respondents to ask for an appropriate modification/clarification of the interim order. The Swetamber Society filed LA. No. 543 of 2003 praying for a modification of the interim order dated 20.2.2003. In that application, it was submitted that after the order dated 25.1.2003 passed by the Commissioner, nine of the statuettes had been installed in the Temple, the statuettes have now taken the shape of idols and they are being worshipped. All the statuettes were more than 500 years old and on 27.1.2003, the statuettes have been divided between two sects; nine have been installed in the Swetamber Temple and nine in the Digamber Temple and the broken statuette was lying in the Temple premises of the Swetamber Society. It was, therefore, prayed for that the inter order dated 20.3.2003 may be modified and status quo as on 20.2.2003 may be directed to be maintained. The learned Single Judge, on 8.4.2003, considered IA No. 543 of 2003 and dismissed the petition, thus maintaining the interim order dated 20.2.2003.

6. On 14.8.2003, the learned Single Judge referred the matter to the Division Bench after noticing the argument of the learned Advocate General for the State of Jharkhand that the land vested in the State and therefore the treasure belongs to the State of Jharkhand. That is how WP (C) No. 916 of 2003 came up before the Division Bench. Meanwhile, possibly, as fairly submitted by Mr. Tara Kant Jha for the Swetamber Society realizing that the revision before the Commissioner, Hazaribagh, was not maintainable and his order was clearly one without jurisdiction, the

Swetamber Society filed WP (C)-No. 4820 of 2003 on 18.9.2003 seeking the quashing of the entire proceedings in Misc. Case No. 25 of 2000, including the order dated 19.8.2003 of the Deputy Commissioner, Giridih. The matter came up before one of us (the Chief Justice) and on 12.12.2003, the writ petition was referred to the Division Bench for being heard along with WP (C) No. 916 of 2003. Thus, WP (C) No. 4820 of 2003 was also linked with WP (C) No. 916 of 2003 and was heard.

7. Before attempting the resolution of the dispute arising in these cases, it appears to us at the outset that the question whether these discoveries will come within the Ancient Monuments Preservation Act, 1904, statuettes being objects of archaeological, historical or artistic interests or under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or the Bihar Ancient Monuments and Archaeological Sites Remains and Art Treasures Act, 1976, is also a question that may arise for consideration. It is seen from the pleadings of the Swetamber Society that the statuettes were 500 years old. The two archaeological reports said to have been submitted during the course of the enquiry indicate that the statuettes were 200 to 250 years old. It is in that context and in the light of the submission of the Advocate General on 14.8.2003 before the learned Single Judge that the treasure belonged to the State of Jharkhand, that we feel that the applicability of the above enactments should be considered by the appropriate authorities under those enactments and that it is necessary to issue a direction to the concerned authorities under those enactments to consider whether these finds come within any of those enactments and whether appropriate orders under the relevant enactment should not be passed regarding their ownership, custody and use. This, of course, is irrespective of the consequences of the decision on the dispute raised under the Treasure Trove Act. On the provisions of the Treasure Trove Act, prima facie there cannot be any doubt that these statuettes recovered from a site adjacent to the Jain Temple, is a treasure within the meaning of that Act. As a finder, the Swetamber Society had a statutory obligation to inform the Collector u/s 4 of the Act, by a notice in writing, of the finding of the statuettes. The Swetamber Society had also an obligation to deposit the treasure in the nearest Government Treasury, or to give the Collector such security as the Collector thought fit to produce it at such time and place as the Collector may, from time to time, require. Admittedly, the Swetamber Society did not give the notice as contemplated by Section 4 of the Act; nor did it deposit the finds in the Government Treasury, or offer to give security for their production as and when called for. Prima facie, it is clear that the Swetamber Society, the finder, has failed to perform its duty under the Act and has not come to this Court with clean hands while filing WP (C) No. 4820 of 2003.

8. The Swetamber Society has a case that the authorities or the police were informed of the finds by the Committee, but even if that assertion is true, obviously, that is not a notice in writing as contemplated by Section 4 of the Act.

9. u/s 5 of the Act, as amended in Bihar, even if no notice is given by the finder in terms of Section 4 of the Act, the Collector could act on receiving information from any other source. That information was provided by the Digamber Committee by bringing to the notice of the Collector that 19 statuettes had been found and that they must be taken into custody and claiming ownership over them since, according to them, the statuettes represent the deities of the Digamber sect. The Collector, on receipt of the information, issued a notice to the Swetamber Society and also published a general notice and after hearing the complainant before him, and the finder, the Swetamber Society, passed an interim order on 19.12.2002 directing that the statuettes be taken into custody and be kept in a safe in a sealed box in the district treasury till the dispute between the parties is finally decided. In other words, in the absence of a notice by the finder, in the absence of an offer to provide security for the production of the statuettes when called upon to do so, and in the absence of the finder depositing it in the treasury, the Collector passed an interim order relating to the preservation of the discoveries even while proposing to hold and inquiry as contemplated by the Act, especially with reference to Sections 5 and 7 of the Act. It is to be noted that the Collector had already issued a general notice and a specific notice to the finder and the complainant/informant before him, but had not ordered the publication of a notification in the manner as the State Government may, from time to time prescribe in that behalf, presumably, a notification in the gazette which again is a general notice. Any way, it is on the ground that no such gazette notification was ordered, that the Commissioner purported to interfere with the order of the Collector. What we are emphasizing here is that it was not a case where the Collector had completed the proceedings. It was a case where he had only started the proceedings and had passed an interim order for the custody and preservation of the statuettes, or the treasures, coming within the purview of the Act, or the objects of archaeological, historical or artistic interest, possibly coming under the other relevant enactments as referred to by us earlier. It appears to us that the order passed by the Collector was clearly consistent with the object sought to be achieved by the Treasure Trove Act and consistent with the need for preservation and protection of the statuettes excavated, until a decision was taken on the question. How the Commissioner could interfere with such an order and that too on the ground on which it was done, is incomprehensible to us. Of course, there was a suggestion on behalf of the Digamber Committee which did not redound to the credit of the Commissioner, but we do not think that it is necessary to go into an inquiry into that aspect at this stage, though we do feel that such a possibility cannot be ruled out.

10. Section 76 of the Bihar Practice and Procedure Manual, obviously, has no application and, when an order is made by the Collector on information being received under Sections 4 and 5 of the Treasure Trove Act, the party aggrieved has to proceed in terms of that Act. We need not labour on that aspect much, since Mr. Tara Kant Jha, learned senior counsel appearing for the Swetamber Society, did not

argue that the revision was maintainable, when it was argued by Mr. Mahato appearing for the Digambar Committee that the revision was clearly not maintainable. In fact, the very filing of the Writ Petition (C) No. 4820 of 2003 by the Swetamber society was on the basis that the order of the Commissioner might lack jurisdiction. Therefore, there is no difficulty in quashing the order of the Commissioner dated 25.1.2003 as one without jurisdiction. Even otherwise, the said order is erroneous on the face of it, since the order made by the Collector was only for interim preservation of the treasures and he had only started the proceedings. It was not as if he had concluded the proceedings without adherence to the procedure laid down in Section 5 of the Act. Even otherwise, he had published a general notice in addition to giving a notice to the informant before him and the finder of the treasure. The gazette notification, if at all, could have been ordered to be made before proceeding further with the enquiry. The failure to order a gazette publication of the notification or to get it published, does not preclude the Collector from exercising jurisdiction to preserve and protect the treasure recovered from the site in question. It is also possible to argue that the issuance of a gazette notification is procedural and the absence of compliance with that procedural requirement cannot make the entire proceeding void. The Commissioner could not have quashed the whole proceedings. He could have, at best directed the Collector to issue such a notification and thereafter to proceed with the inquiry and, possibly, in an appropriate case, set aside the interim order made, if it was illegal or erroneous. In this case, the Commissioner has proceeded to quash the whole proceedings on the alleged ground that a notice in the gazette had not been published. We find that the said approach by the Commissioner is wholly erroneous. Moreover, the order for interim protection of the treasure recovered cannot be quashed on that ground since the proceedings were to be continued and completed as provided in Sections 5 and 7 of the Act. Therefore, in any event, the order of the Commissioner is illegal and liable to be quashed.

11. Now the question is whether the Collector was justified in initiating the proceedings under the Act on the intimation received by him from the Digambar Committee. Obviously, as the finder of the treasure, the Swetamber Society had an obligation to give a notice in writing, to the Collector u/s 4 of the Act. There is no case that the nineteen statuettes recovered were worth below Rs. 10/- only. Therefore, prima facie, they come within the definition of "treasure" under the Act. In terms of the Bihar Amendment to Section 5 of the Act, the Collector gets jurisdiction to initiate a proceeding under the Act on a notice u/s 4 of the Act given to him by the finder or on receipt of information from any other source. That information had been furnished to him by the Digambar Committee and he had proceeded thereupon. Therefore, prima facie the action of the Collector initiating proceedings under the Act is perfectly legal, nay, warranted. Hence, there is no substance in the argument on behalf of the Swetamber Society that the initiating of the proceeding was bad in law. Moreover, the argument comes with ill grace from

the Swetamber Society, since that Society had failed to fulfil its statutory obligation u/s 4 of the Act.

12. Similarly, the direction by the Collector for taking the treasure into custody and to keep it preserved in the Government Treasury is also seen to be legal and proper. The finder, the Swetamber Society not only did not give notice in writing as contemplated by Section 4 of the Act, but it did not also offer to give such security, as the Collector thought fit, to produce the treasure at such time and place as the Collector may, from time to time require. As the finder the Swetamber Society also did not deposit the treasure in the nearest Government Treasury. In that situation, there was clearly an obligation on the Collector, exercising power under the Act, to provide for preservation of the treasure. That is what he did when he passed the order on 19.11.2001 directing the Circle Officer to keep the statuettes in a sealed box and to deposit the box in the Government Treasury, pending adjudication of the dispute. The said order, in our view, is one consistent with the duty of the Collecting acting under the Act. Moreover, it is only an order in the interests of justice, to preserve and protect the treasure found, pending the quasi-judicial proceedings before him and the said action can only be said to be consistent with the object sought to be achieved by the Act. By no stretch of imagination, can the order be said to be one outside the jurisdiction of the Collector, or one unwarranted in the circumstances of the case. Therefore, no valid attack could be mounted against the order for preservation and protection made by the Collector in exercise of jurisdiction under the Act, pending inquiry under the Act. As a matter of fact, the main attempt of Mr. Tara Kant Jha, senior counsel for the Swetamber Society was to persuade us not to order the taking into custody of the statuettes by the Circle Officer as ordered by the Collector. He submitted that, rightly or wrongly, after the order of the Commissioner, the finds had been divided between the two groups and nine statuettes out of the ten left with the Swetamber Society had been installed in the Temple and are being worshipped and that position may not be disturbed. Of course, one of the statuettes is, according to the parties, broken or damaged in the course of the excavation and that, according to the Swetamber Society was lying in its premises. Mr. Jha argued that the sentiments of the people need not be hurt by directing the statuettes to be taken into custody by the Circle Officer at this stage. Mr. Ram Mahato, learned senior counsel appearing for the Digamber Committee submitted that such attempts at overreaching the judicial or quasi judicial proceedings should not be encouraged and this was a fit case where the Court should direct the Circle. Officer or the Anchal Adhikari to take the statuettes into custody and preserve them as ordered by the Collector. He pointed out that the very filing of the Writ Petition (C) No. 4820 of 2003 by the Swetamber Society was an attempt to stall the order of the Collector directing the Anchal Adhikari to take the statuettes into possession in the context of the interim order passed by this Court in WP (C) No. 916 of 2003 and the refusal to vacate that interim order on a motion by the Swetamber society in that behalf. He submitted that the filing of the Writ

Petition (C) No. 4820 of 2003 was without bona fides and was an attempt to overreach the order of this Court and such an attempt should not be countenanced, but should be put down with a heavy hand. He also submitted that nobody should consider himself above the law. He further pointed out that the allegation that these statuettes were divided pursuant to a meeting on 27.1.2003 itself was not true. It can be seen that the document was created allegedly on 16.2.2003, i.e. just a day prior to the filing of the Writ Petition (C) No. 916 of 2003 and the whole thing was stage managed to get over the order of the Collector.

13. At this stage, we may notice the appearance of an intervener before us. He claims to belong to the Svetamber Sect. His case is that the division of the statuettes is unwarranted, since the entire treasure belongs to the Svetamber Society and the Society acted illegally and improperly in purporting to divide the statuettes and handing over nine of them to the Digamber Committee. He challenged the division of the treasure in that manner.

14. We have noticed that the order of the Commissioner on the strength of which the parties dealt with the statuettes excavated, is clearly one without jurisdiction and is even otherwise illegal and unsustainable. Therefore, anything done pursuant to or on the strength of such an order could not be countenanced or recognised. We have already indicated that the order of the Collector was just and proper in the circumstances and it was intended to preserve these treasures until an appropriate decision was taken on the finds in terms of the Act. We have also indicated that it is necessary to consider whether these objects are not objects of archaeological, historical or artistic interest within the meaning of the enactments referred to by us earlier. Therefore, it appears to us to be necessary to preserve these statuettes until a decision is taken by the appropriate authorities. Whether these statuettes are idols which were being worshipped in the days of yore is another question. Merely because the statuettes are installed in a Temple, they need not be treated as Svetamber idols to be worshipped by people. The only ground put forward in answer to the submission on behalf of the Digamber committee that these statuettes must be taken into custody by the Circle Officer as ordered by the Collector, is that nine of them had already been installed in the temple by the Svetamber Society and the people had started worshipping them. But if we were to accept that submission and leave the statuettes where they are until a decision is taken, it will be inconsistent with our finding that the order directing them to be taken into custody by the Circle Officer, to be preserved in the Treasury until the dispute is settled, is perfectly legal, just and warranted by the circumstances of the case.

15. Moreover, we must take note of the fact that order of stay passed by the learned Single Judge was sought to be got vacated by the Svetamber Committee by a specific application in that behalf and that application was dismissed by the learned Single Judge after considering the ground of division of the statuettes projected



therein. An interim order is normally to be respected by the Court, when it finally disposes of the proceedings, though, no doubt, in an appropriate case, it will have jurisdiction to modify, vary, or nullify that order depending on the ultimate conclusion it may reach in the case. Here, we have reached the conclusion that the order challenged in WP (C) No. 916 of 2003, wherein the interim order was made, was illegal and without jurisdiction and the original order passed by the Collector, that was set aside by the Commissioner, was the just and proper order to be passed in the circumstances. In that situation, there has arisen no occasion for varying or modifying or nullifying the effect of the interim order passed. The argument that the division was effected before the interim order was made is again a matter for investigation in the context of the arguments before us. But in any event, it is seen that any such division can only be subject to the result of the adjudication by this Court in this writ petition and by the authorities ultimately under the Act. Therefore, something done by the parties or one of them during the pendency of the proceeding cannot improve matters or affect the legal position emerging from the conclusions reached by this Court. There appears to be a feeling abroad here that powerful persons or organizations are not obliged to follow the rule of law and even if they violate it with impunity or do something which is seen to be an attempt to over reach the judicial process, they can get away with it because of influence, clout or money power. Certainly, such an attitude cannot be encouraged or tolerated. No one can think that he is so high and mighty that he can violate the law with impunity and get away with it. It is the duty of Courts to disabuse such people of that impression. Otherwise, it will sound the death-knell of the judicial process and the rule of law. Moreover, the Swetamber Society is liable to be prosecuted u/s 20 of the Act for acts of omission to comply with the demands of Section 4 of the Act. Thus, the claim of the Swetamber Society to keep the statuettes is based on an illegality. In terms of Section 20 of the Act, the treasure is even liable to be confiscated. Thus, on the whole, we are satisfied that the Circle Officer or the Anchal Adhikari should take all the statuettes recovered from the site in question, into custody for preserving them in a sealed box and to preserve the sealed box in the Government Treasury as ordered by the Collector. It is brought to our notice that the Collector had already passed order on 19.8.2003, the effect of which is to take back these statuettes to protect them by preserving them in the treasury. In that situation, we are satisfied that it is necessary to direct the Circle Officer or the Anchal Adhikari and the Collector to implement the order of the Collector dated 19.11.2001 immediately.

16. Before parting with the case, we think that it is necessary to comment on the conduct of the Circle Officer in not strictly complying with the direction of the Collector issued on 19.11.2001. Feeling dissatisfied with the conduct of the Circle Officer, we had given him specific notice to show cause why we should not comment on his conduct, but he failed to show cause. We find his conduct highly improper. Obviously, he was trying to favour one of the parties to the proceedings. It is not clear what was the inducement therefor. But we wish to record that his conduct in

disobeying the order of the Collector is condemnable. We direct the Collector or the superior authority of the Circle Officer to initiate a proceeding against him for the disobedience of the order of the Collector passed on 19.11.2001. We must also record our strong condemnation of the manner in which the Commissioner dealt with the matter in a non-maintainable revision before him.

17. In the result, we allow WP (C) No. 916 of 2003 and quash the order of the Commissioner dated 25.1.2003 and restore the order of the Collector dated 9.1.2001. We direct the concerned authorities to consider whether the statuettes recovered are not objects of archaeological, historical or artistic interest under the concerned acts referred to by us in the earlier part of this judgment. We direct the Collector to get his order dated 19.11.2001 strictly implemented by the Circle Officer and Anchal Adhikari. We direct the Collector to proceed in accordance with the Act after fulfilling the requirements of the Act and to take a decision as contemplated by the Act. We direct the Collector and the other superior officers of the Circle Officer concerned to look into his conduct in not obeying the order of the Collector dated 19.11.2001 and making an appropriate enquiry into his conduct from all angles. We direct the Collector to expedite the proceedings and after hearing all concerned, pass a final order as contemplated by the Act. We dismiss Writ Petition (S) No. 4820 of 2003.

S.J. Mukhopadhyaya, J.

18. I agree.