

(2000) 09 PAT CK 0083

Patna High Court

Case No: C.W.J.C. No. 8602 of 2000

Smt. Buddhi Devi Dharamshala
and Sri Kaushiki Nath Mahadeo
Mandir

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Sept. 6, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2001) 1 BLJR 126 : (2000) 4 PLJR 789

Hon'ble Judges: Radha Mohan Prasad, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Radha Mohan Prasad, J.

In this writ petition, the petitioner has assailed the validity of the order dated 10.8.2000, contained in Annexure 5, passed by the Chairman of the Bihar State Board of Religious Trusts declaring Srimati Buddhi Devi Dharamshala and Shri Kaushiki Nath Mahadeo Mandir, Aminabad, Semapur, Katihar as a public trust on the basis of the deed creating trust.

2. Earned Counsel for the petitioner has submitted that the impugned order is wholly without jurisdiction and bad in law inasmuch as in case there was any dispute with respect to the nature of the trust, the authority should have proceeded u/s 43 of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as "the Act"), but the Chairman of the Board (respondent No. 2) has passed the order without holding any such inquiry. It is also submitted that from the trust deed it would appear that it is a private trust and not a public trust. As such, the declaration of the Trust in question as being a public trust is contrary to the provisions of the deed

itself creating trust.

3. Mr. A. P. Jittu, learned Counsel appearing for the Board has submitted that Section 29 empowers the Board to supersede a trust and make such declaration and u/s 29(3) of the Act if any person interested in the religious trust is aggrieved, he/she can make an application to the District Judge for varying, modifying or setting aside such order. He further submitted that the petitioner has remedy u/s 54 of the Act also which empowers the District Judge of the district in which the whole or any part of the subject-matter to the religious trust is situated, to deal with such grievances.

4. This Court finds it difficult to accept the submission of the learned Counsel for the petitioner that in the facts and circumstances aforementioned, the inquiry contemplated u/s 43 of the Act was required to be complied. It is only in case of dispute as to whether any immovable property is or is not a trust property which can be inquired into, either on its own motion or on application, by the authority appointed in this behalf by the State Government by notification in the Official Gazette and not to determine as to whether it is a public trust or a private trust, for which, in my opinion, the remedy either lies before the District Judge under the aforementioned provisions of the Act itself or before the Civil Court of competent jurisdiction. Such declaration is dependent upon a mixed question of fact and law, which cannot be gone into in the writ jurisdiction of this Court under Article 226 of the Constitution of India. A reference in this regard can be made to the decision of this Court in the case of Mahanth R.S. Das v. Bihar State Religious Trusts Board 1998(3) PUR 218.

5. The writ petition is, thus, summarily dismissed. Petition dismissed.