

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16795 of 2021

Mahanth Ramesh Giri @ Ramesh Giri, Son/Chela of Sadanand Giri, Resident of Bodh Gaya Math, Bodh Gaya, District-Gaya, presently Mahanth of Bodh Gaya Math, Bodh Gaya, District-Gaya.

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Bihar State Religious Trust Board, Patna through its President, Vidyapati Marg, Patna-1.
3. The Superintendent, Bihar State Religious Trust Board, Patna, Vidyapati Marg, Patna-1.
4. The District Magistrate, Gaya, District Gaya.
5. The Additional Collector, Gaya, District Gaya.
6. The Sub-divisional Officer, Sadar, Gaya, District Gaya.

... .. Respondents

Appearance :

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| For the Petitioner | : | Mr. Kamal Nayan Choubey, Senior Advocate Mr. Amit Kumar, Advocate Mr. Ravi Ranjan, Advocate Mr. Ambrish Kumar, Advocate |
| For the Respondent State: | | Mr. S K Mandal, S.C.-3 |
| For the Respondent Board : | | Mr. Ganpati Trivedi, Senior Advocate |

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 17-01-2022

This application under Article 226 of the Constitution of India is for quashing of the entire proceeding initiated with the issuance of letter No. 89 dated 09.04.2021 against the petitioner on the basis of certain complaints available against him as the



Mahanth of Bodhgaya *Math* located in the district of Gaya. Subsequently, an order dated 27.07.2021 has been passed by the Bihar Board of Religious Trusts (hereinafter referred to as 'the Board') and a notification dated 29.07.2021 has been issued by the President of the Board in exercise of power under Section 33 of the Bihar Hindu Religious Trust Act, 1950 (hereinafter referred to as 'the Act'), whereby, considering the existence of disputes in relation to the management of the properties of the *Math* and inter-party dispute among different parties, for better administrative and financial management as well as for protection of the properties of the *Math*, a Committee has been constituted by way of interim measure consisting of the following :-

- (1) Member, Bihar Board of Religious Trust
- (2) District Magistrate, Gaya
- (3) Senior Superintendent of Police, Gaya
- (4) Sub Divisional Officer, Sadar, Gaya
- (5) Deputy Collector Land Reforms, Gaya, and
- (6) Executive Officer, Bodhgaya

2. The said order dated 27.07.2021 and the notification dated 29.07.2021 are also under challenge in this application.

3. The petitioner has asserted that he was elected as Mahanth of the said *Math* on 14.11.2013 in accordance with the



customs for succession to *Mahanthship* of the *Math*. The said election of the petitioner has not been objected to and, therefore, his *Mahanthship* stands confirmed. It has further been stated that the *Math* in question is centrally located with high-value immovable properties. There has been consistent attempts by many persons to take over the *Math*, somehow or the other. It has also been asserted that one Siddhi Giri Darbari of the *Math* declared himself *Chela* of Kripa Shankar Giri, despite the fact that at no point of time said Kripa Shankar Giri had declared said Siddhi Giri as his *Chela* or his valid legal heir and the said fact was never mentioned by Sudarshan Giri and thus a ploy was laid to grab the entire land of Kripa Shankar Giri by falsely declaring Siddhi Giri as his legal heir. The moment the petitioner learnt about the said facts, he immediately complained the same to the District Magistrate, Gaya. In advancement of their illegal motive, the persons, who wish to illegally take over the affairs of the *Math*, filed many complaints before different authorities including the Board, the petitioner asserts.

4. The aforesaid facts, as have been noted in the present order, clearly demonstrate the nature of existing disputes in the matter of the management of the *Math* in question. Further, the averments made in various other paragraphs of the writ petition,



illustratively paragraphs 21 to 30 and 32, raise questions of facts apparently in serious dispute.

5. In the light of some of the complaints received in the Board, an order was passed earlier on 13.10.2020 by the President of the Board, re-constituting the trust of *Math*. The said order, on challenge, was set aside by this Court by an order dated 04.03.2021 passed in C.W.J.C. No. 1491 of 2020 (***Mahanth Ramesh Giri @ Ramesh Giri vs. The State of Bihar and Others***) mainly on the ground that the President of the Board could not have passed the order as the Board itself was not in existence in terms of the regulations framed by the Board. This Court had accordingly held the order passed by the President of the Board constituting a trust of the *Math* to be illegal. This Court, while passing the said order dated 04.03.2021, however, observed that as the Board had since been constituted, the President of the Board would be at liberty to exercise its power and act as per the statutory provisions and pass appropriate orders.

6. Subsequent to passing of the order of this Court dated 04.03.2021, a notice was issued to the petitioner informing him about certain allegations received against him from various quarters. He was asked to present his case before the Board on 16.04.2021. Subsequently, the impugned order dated 27.07.2021



has been passed by the Board, as noted above. In the light of the said order dated 27.07.2021, the impugned notification dated 29.07.2021 has been issued under the signature of the President notifying the interim constitution of the Committee of administrative Officers, as noted above. The said notification also delineates various duties to be discharged by the Committee, constituted under Section 33 of the Act.

7. Mr. Kamal Nayan Choubey, learned Senior Counsel appearing on behalf of the petitioner has argued that compliance of Clause (h) of sub-section (2) of Section 28 of the Act is a condition precedent for exercise of power under Section 33 of the Act. Clause (h) of sub-section (2) of Section 28 of the Act confers upon the Board, power to remove a trustee from his office on the ground mentioned therein. He has placed heavy reliance on decisions of this Court in case of *M/s Agrawal Dharamshala & Ors. vs. Bihar State Board of Religious Trust & Ors*, reported in 1988(1) PLJR 212 (D.B.) and *Ishwari Prasad Jhunjunwala v. Bihar State Religious Trust Board* (AIR 1989 Patna 349) (S.B.), to bolster his contention. Reliance has also been placed on the decisions in the cases of *Mahanth Motilal Goswami v. State* (AIR 1993 Patna 171(D.B.)); *Tej Bahadur Verma, Managing Trustee of Sri Shyam Lal Rashtriya Vidyalaya Trust Board, Khagaria vs. The State of*



Bihar and 6 Ors.(S.B.), reported in **1998(3) PLJR 347** and ***Mahanth Vijay Das vs. The State of Bihar & Ors.***, reported in **2003(4) PLJR 710**.

8. Mr. Ganpati Trivedi, learned Senior Counsel appearing on behalf of the Board, on the other hand, has argued that in the earlier round of litigation, constitution of the Committee was interfered with by this Court by order dated 04.03.2021 (supra) taking note of the fact that the Board itself was not duly constituted in accordance with law and, therefore, the President could not have exercised any power of the Board. He has submitted that it was in the light of the order of this Court that a duly constituted Board has issued the impugned notification in exercise of power under Section 33 of the Act, in the best interest of administrative and financial management of the *Math* and protection of its properties. He has submitted that the records would show that there are serious disputes in respect of the right of management of the *Math* in question and accordingly, the Board has rightly exercised its power under Section 33 of the Act. He has refuted the contention of the learned Senior Counsel appearing on behalf of the petitioner that vacancy arising out of removal of a trustee in exercise of power under Clause (h) of sub-section (2) of Section 28 of the Act is a condition precedent for exercise of



power under Section 33 of the Act. It is his submission that unambiguous language of Section 33 of the Act empowers the Board to appoint a temporary trustee. He contends that the constitution of the committee in question is under Section 33 of the Act. He has accordingly submitted that the petitioner has not been able to make out a case for interference by this Court in exercise of power of judicial review under Article 226 of the Constitution of India.

9. On careful examination of Section 33 of the Act, we have no hesitation in concluding that the Board has power to appoint any person to act as trustee of a Trust for such period not exceeding one year in following circumstances : -

(I) Where there is a vacancy in the office of trustee of a religious trust and there is no one competent to be appointed as trustee under the terms of the deed of such trust;

(II) Where there is a bonafide dispute as to the right of any person to act as trustee and in the opinion of the Board, there is likelihood of breach of peace or serious interference with the management of the property of such trust; and

(III) Where there is a vacancy caused by the order of the Board passed under Clause (h) of sub-section (2) of Section 28 of the Act.



10. It can easily be discerned on the basis of the aforesaid analysis of Section 33 of the Act that question of exercise of power by the Board to appoint a temporary trustee in the third situation will arise only when there is a vacancy because of removal of trustee from his office for the reasons enumerated in Clause (h) of sub-section (2) of Section 28 of the Act and not otherwise. The submission that removal of a trustee under Clause (h) of sub-section (2) of Section 28 of the Act is the only circumstance where the Board can exercise power under Section 33 of the Act, in our opinion, is untenable and deserves to be rejected. The Division Bench in case of *M/s Agrawal Dharamshala* (supra) has held as under : -

“On a plain reading of the said Act it appears that whenever there is a vacancy in the office of trustee of a religious trust and no one is competent to be appointed as trustee under the terms of the deed of such trust or where there is a bonafide dispute as to the right of any person to act as trustee and in the opinion of the Board there is likelihood of a breach of the peace or serious interference with the management of the property of such trust, the Board may, subject to any order of a competent Court,



appoint any person to act as trustee of the said trust.”

11. After having held as above, the Division Bench in case of *M/s Agrawal Dharamshala* (supra) added that a trustee can be appointed under Section 33 of the Act even in such cases where the vacancies have been caused by passing an order under Clause (h) of sub-section (2) of Section 28 of the Act. The Division Bench further observed that the said power under Section 33 of the Act can be exercised in case of removal of a trustee under Clause (h) of sub-section (2) of Section 28 of the Act only after removal of trustee in accordance with the said provision.

12. The Board, in the present case, has not exercised power under Section 33 of the Act with reference to the provision under Clause (h) of sub-section (2) of Section 28 of the Act, rather taking into account bonafide dispute as to the right of the persons to act as trustee and serious interference with the management of the properties of the Trust. The decision rendered by this Court, in case of *Ishwari Prasad Jhunjunwala* (supra), relied on by learned Senior Counsel appearing on behalf of the petitioner, cannot support his contention that compliance of Clause (h) of sub-section (2) of Section 28 of the Act is the sole condition precedent for exercise of power under Section 33 of the Act.



Paragraph 24 of the said decision is noteworthy and is being reproduced hereinbelow : -

“24. Evidently, therefore, there exists a dispute as to whether the petitioner is the owner in respect of the said property or not. In my opinion, such a question of title cannot be decided by me in exercise of my jurisdiction under Arts. 226 and 227 of the Constitution of India. Such a disputed question of title can be decided in terms of the provisions contained in S. 43 of the Bihar Hindu Religious Trusts Act, 1950.”

13. We are conscious of the fact that Section 43 of the Act has been substituted by Sections 43 to 43F of the Act by way of amendment by Act No. 1 of 2007.

14. The Division Bench in case of *Mahanth Motilal Goswami* (supra) has no application at all in the facts and circumstances of this case. The Division Bench in the said case has held that a temporary trustee can be appointed in exercise of power under Section 33 of the Act, if the conditions precedent therefor exist. In the said case, the petitioner had himself pleaded that he was appointed as *Mahanth* pursuant to a recommendation made by a Member of Parliament to the Chief Minister, which was forwarded by the Chief Minister to the respondent. The Court, in



such circumstance, has held in case of ***Mahanth Motilal Goswami*** (supra) that the function of the Board is a statutory one and such statutory functionary cannot act on the basis of recommendation of a person who has no role to play under the statute. In the backdrop of the fact that the appointment of the petitioner of that case as a temporary trustee itself was illegal, the Court applied the legal principle that when by quashing of an illegal order by the Court in exercise of jurisdiction under Article 226 of the Constitution of India another illegal order may revive, it may not quash the illegal order or may quash both the orders. The said case has no application in the facts and circumstances of the present one. Similarly, the decision in case of ***Tej Bahadur Verma, Managing Trustee of Sri Shyam Lal Rashtriya Vidyalaya Trust Board, Khagaria*** (supra) and ***Mahanth Vijay Das*** (supra) do not support the petitioner's contention that exercise of power under Clause (h) of sub-section (2) of Section 28 of the Act is the only condition precedent for exercise of power under Section 33 of the Act.

15. In our opinion, the impugned decision of the Board by way of interim measure in exercise of power under Section 33 of the Act cannot be said to be unauthorized, illegal and suffering from such legal infirmity requiring interference by this Court in



writ jurisdiction under Article 226 of the Constitution. It is evident from the petitioner's own pleading that there are serious disputes in relation to administrative and financial management of the *Math*. Considering safety and protection of the properties of the *Math*, the Board, after due consideration, has issued the impugned notification dated 29.07.2021. We do not find any reason for this Court's interference in such situation as it cannot be said that no condition requisite for exercise of power under Section 33 of the Act, as noted above, exists.

16. situated thus, in our opinion, this writ application has no merit and is accordingly dismissed.

17. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J: I agree.

(Madhuresh Prasad, J)

Pawan/-

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