

Sewait Sant Kumar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-20-2003

Judge : R.S. Garg, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41 - Order 39, Rules 1 and 2;
Trust Act; Transfer of Property Act - Sections 52

Appeal No. : (C.W.J.C.) No. 12779 of 2002

Appellant : Sewait Sant Kumar Singh

Respondent : State of Bihar and ors.

Advocate for Def. : A.P. Jittu, Adv. for Trust Board

Advocate for Pet/Ap. : Atul Kumar Pandey and Uday Pratap Singh, Advs.

Disposition : Appeal allowed

Judgement :

R.S. Garg, J.

1. Heard.

2. The petitioner being aggrieved by the letter (Annexure-5) dated 22-7-2002, issued by the Chairman/President of the Bihar State Board of Religious Trust and yet another letter (Annexure-6) of even date requiring the District Magistrate to

issue instruction to the S.D.O. Hajipur to restrain the present petitioner from alienating the property in dispute and requiring the Deputy Registrar not to accept the documents for registration has come to this Court.

3. The petitioner says that after receiving the said letter the concerned authorities are acting in a manner contrary to law and in any case the Chairman of the-Trust Board had no authority to issue such a direction in form of request to the officers of the State.

4. It is contended by the petitioner that being aggrieved by the action of the Trust Board the petitioner filed a title Suit No. 260 of 1989 wherein the parties were heard and by judgment dated 14-12-1994 the learned 1st Munsif Hajipur granted a decree in favour of the present petitioner restraining the respondents from interfering with the property in dispute.

5. The petitioner's submission is that even if an appeal is filed by the Trust Board challenging the correctness, validity and propriety of the said judgment the Chairman of the Trust Board has no authority to issue such direction/request.

6. It was firstly contended by the learned Counsel for the Trust Board that the suit has not been finally disposed of any only the application for injunction was disposed of. I am sorry to record that the learned Counsel for the Trust Board did not care to read the judgment passed by the Munsif. On page 94 of the compilation (internal page 54 of the Judgment) in paragraph 22 of the judgment the learned Munsif in unambiguous terms and with no confusion has observed that the suit of the plaintiff despite contest is decreed with cost. When this phrase was brought to he notice of the learned Counsel for the Trust Board he submitted that the later part of the said paragraph would make it clear that only the application for injunction was disposed of. He maintained his stand and read the remaining part of the said judgment. I am again pained to record my anguish. A fair perusal and simple understanding of paragraph 22 of the said judgment would show that the suit was decreed with cost and the defendants were permanently restrained from interfering with the plaintiffs' possession over the suit property consisting of the disputed temple and the deities so also the properties which have been dedicated to the temple/deities.

7. The order dated 14-12-1994 in fact is not an interim order but is a final judgment. The suit has been decreed and against the same the Trust Board has preferred an appeal. Instead of filing any application in the said civil appeal seeking injunction, temporary, permanent or so or seeking that the plaintiffs/respondents be restrained from alienating the property or creating the charge over the property the Chairman of the Trust Board found a novel way of getting the relief from the official authority. It cannot be disputed under the law that when an appeal is filed under Order XLI of the Code of Civil Procedure the provisions of Order XXXIX are also applicable to the said proceedings. Order XXXIX, Rule 1 and Rule 2 if read in juxtaposition would confer a right upon any party to seek injunction against the waste, damage and alienation of the property. However, the party plaintiffs or the party appellant can only seek an injunction that they cannot be dispossessed. In the present case for reasons best known to the Trust Board it did not make an application to the appellate authority restraining the plaintiffs decree holder from alienating the property. The document under challenge, Annexure-5 and Annexure-6 though are in form of a request but in fact are orders, directions and commands, they required the District Magistrate Vaishali and the Deputy Registrar Hajipur Vaishali to restrain the plaintiffs from alienating the property and not to receive the executed document for registration. I do not understand that under what provisions of law either the Trust Act or any other common law the Chairman has such authority to issue such a command or make such a request. I also do not understand the stand and stands of the administrative authority in obliging the Chairman of the Trust Board. When an application is made to an authority then such authority without being influenced by the person who is the applicant before it, has to pass orders in accordance with law. The justice cannot be influenced by the personality of the applicant. The law of the country must be respected and observed. The Chairman of the Trust Board was imply an applicant. The District Magistrate/Collector was obliged to look into the provisions of the law and the extent of his jurisdiction and authority. He could not simply pass an order obliging the Chairman of the Trust Board. I pose a question to myself that if such an application is filed by an ordinary citizen would the District Magistrate be so efficient smooth and competent in protecting his rights. Unfortunately, I think no officer would do that. This Court is flooded with the writs complaining that the

officers be required to come out of their suspended animation, act in accordance with law and pass necessary orders. It appears that the authorities are scratching each other's back. One makes an application and everyone passes an order obliging the President. The Rule of law is not that the law is to be observed only for the high ups and the poors and downtrodden or ordinary citizens should be under the shoes of the authorities. The rights of the public are of paramount consideration. The rights and interest of the public/citizens of the country is always of paramount consideration. Corporations, Trust and such bodies are created and organised with a sanguine hope that these work in proper manner and function properly, so also that there is no derailment. But the law does not confer any right upon the Chairman/President etc. of such Corporation, Boards etc. to fule the public. In the present matter the Chairman of the Trust Board without any authority of law has made the application, when he is a party defendant then he has to respect the law. He cannot circumvent the provisions or surpass the law by exploiting his personality or coercing the authority or pressurising them because of his authority. In the present mater, it appears that instead of taking any legal action the Chairman of the Trust Board is entering into the nefarious activities. His conduct deserves to be condemned. The effect and operation of Annexures-5 and 6 deserves to and is accordingly quashed. Any subsequent action taken on Annexures-5 and 6 by any Authority stands nullified. The Addressees of Annexure-5 and 6 are hereby directed that if they act on the request contained in Annexures-5 and 6 and contrary to this order, then they may be taken to task and may invite the wrath of the lawful authority of the Court.

8. The petition is allowed with cost of Rs. 300 to be paid by the Chairman personally within 15 days from today. At this stage learned Counsel for the Respondent Trust Board submits that in these proceedings I must order the learned appellate Court to hear and decide the appeal at an early date. I fail to appreciate the propriety of this submission. The question before me simply is that whether the Chairman has any power, authority or jurisdiction to issue Annexures-5 and 6. In these proceedings any order for disposal of the appeal cannot be passed. Despite conclusion of the dictation, Mr. Jittu says that if the property is sold or alienated or any charge is created over it during the pendency of the appeal, then the appeal may become infructuous and the rights of the Trust Board

would be adversely affected, therefore, this Court must interfere in the matter. The attention of the Trust Board is invited to the provisions of Section 52 of the Transfer of the Property Act and the observation earlier made in this judgment. The prayer is turned down.

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