MAHANT PARICHCHAN DAS

v.

THE BIHAR STATE BOARD OF RELIGIOUS TRUSTS & ORS.

November 6, 1979

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

Bihar Hindu Religious Trusts Act, 1951 (1 *of* 1951)—*Trust of a public or private nature—Tests.*

The appellant (plaintiff) the present Mahant, filed a suit for a declaration that the plaint-schedule properties were his personal properties and that there was no trust of a religious or public nature so as to attract the provisions of the Bihar Hindu Religious Trust Act 1951. It was contended in the suit that one G constructed a temple on his own land in the village, installed deities, performed puja and raj-bhog till his death, that the public had no concern with the idols and that after his death he was succeeded by his son who became a bairagi. Apart from the properties left by him, his son also acquired other properties. On the son's death he was succeeded by his Chela who became a Mahant. Each succeeding Mahant was succeeded by his Chela. Properties were acquired by the respective Mahants in their own name and treated as their personal properties. One of the Mahants constructed a temple in a nearby village where he installed deities and performed puja and raj-bhog. It was claimed that the temple and the properties were the private properties of the Mahant and the public did not have any interest or right in them. The suit was contested by respondent No. 1, contending that the temples and the properties were not the private properties of the Mahant and that they belonged to a Hindu Religious Trust to which the provisions of the Bihar Hindu Religious Trusts Act, 1951 were applicable. The Trial Court dismissed the suit and its decree was confirmed by the High Court.

In the appeal to this Court, the question was whether the plaint-schedule properties were properties in respect of which there was a trust of a public or religious nature so as to attract the provisions of the Bihar Hindu Religious Trusts Act, 1951.

HELD : 1. The High Court was right in holding that there was a trust of a public nature. [1130B]

2. The fact that members of the public were permitted to go to the temple without any hinderance might not be a circumstance which by itself would conclusively establish that the temple was a public temple in the absence of an element of right in the user of the temple by the public. Conversely the free use of the properties of the temple by the Mahant at a time when he was the sole manager of the temple and its properties would not necessarily lead to the inference that the temple was not a public temple. [1129E]

3. There can be no simple or conclusive factual test to determine the character of a trust. The totality of the circumstances and their effect must be considered. [1129F]

In the instant case not only were the members of the public allowed free access to the temple, but they were evincing much greater interest in the insti-

A tution as several villagers had made gifts of land to it, a circumstance which would ordinarily be consistent with the nature of the institution being public and not private. [1129F]

4. The situation of the temple would be an important circumstance in determining whether it was private or public. [1129G]

B *Deokt Nandan* v. *Murlidhar* [1956] S.C.R. 756 referred to.

In the instant case the High Court had pointed out that the temple was constructed outside the village on open land between two villages so as to be convenient to the villagers of both the villages. It was constructed on a high platform and was open on all sides with plenty of space around it, so as to attract and accommodate large number of villagers from two villages. This indicated that the trust was of a public nature. [1129H—1130A]

C

5. The donation of land by members of the public to the institution and location of the temple at a place freely accessible and convenient to the public were circumstances which indicated that the trust was of a public nature. [1130B]

Bihar State Board Religious Trust, Patna v. *Mahant Sri Biseshwar Das*, [1971] 3 S.C.R. 680, distinguished.

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2582 of 1969.

From the Judgment and Decree dated 12-12-1961 of the Patna High Court in Appeal from Original Decree No. 50/57.

B. P. Singh for the Appellant.

E *D. Gobardhan* for Respondents 1-2.

U. P. Singh for Respondent No. 3.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J.—The only question for consideration in this appeal is whether the plaint-schedule properties are properties in respect of which there is a trust of a public or religious nature so as to attract the provisions of Bihar Hindu Religious Trusts Act (Act I of 1951). The plaintiff-appellant filed the suit out of which the appeal arises for a declaration that the properties were his personal properties and that there was no trust of a religious or public nature so as to attract the provisions of the Bihar Act I of 1951. His case, as set out in the plaint, was that one Gurdyal Singh constructed a temple on his own land in the village of Dumri and installed the deities of Ramji, Lakshmanji and Sitaji in the temple. He used to perform puja and raj-bhog till his death. The public had no concern with the idols. After his death he was succeeded by his son Gulab Singh who became a bairagi assuming the name of Gulab Das. Apart from the properties left by Gurdyal Singh, Gulab Das also acquired other properties. On his death he was succeeded by his Chela Brahmdas who

F G H

in turn was succeeded by his Chela Dwarika Das. Each succeeding Mahant was succeeded by his Chela, the present Mahant being the plaintiff-appellant. Properties were acquired by the respective Mahants in their own individual names and were always treated as their personal properties. Brahmdas constructed a temple in the village of Maudehin where also he installed the deities of Ramji, Lakshmanji and Sitaji and used to perform puja and raj-bhog. The temple and the properties were the private properties of the Mahant and the public did not have any interest or right in them. The suit was contested by the Bihar State Board of Religious Trusts and others who pleaded that the temples and the properties were not the private properties of the Mahant and that they belonged to a Hindu Religious Trusts to which the provisions of the Bihar Religious Trusts Act were applicable. The suit was dismissed by the Additional Sub Judge of Muzaffarpur and the decree of the Trial Court was confirmed by the High Court of Patna.

Shri B. P. Singh, learned counsel for the appellant-plaintiff accepted the several findings arrived at by the High Court on various evidential matters and argued that even on those findings it could not be held that the properties belonged to a Trust of a religious or public nature. He invited our attention to the decision of this Court in *Bihar State Board Religious Trust, Patna* v. *Mahant Sri Biseshwar Das,*(1) and submitted that on almost identical facts it had been held in that case that there was no trust for religious or public purposes.

In *Bihar State Board Religious Trust, Patna* v. *Mahant Sri Biseshwar Das,*(1) the facts found by the High Court as summarised by this Court were :

> "(1) that the temple was constructed by Gaibi Ramdasji and it was he who installed the deities therein;
>
> (2) that he was succeeded to the mahantship by his chela, and thereafter succession to the mahantship had been from guru to chela;
>
> (3) that the appointment of a successor has been all through-out from guru to chela, the reigning mahant appointing or nominating his successor from amongst his chelas and the members of the public have had at no time any voice in the selection or nomination;
>
> (4) that the properties have always been recorded in the names of the mahants as proprietors and not in the name of the deities in the D registers, Khewats and Khatians;

(1) [1971] 3 S.C.R. 680 at 686, 687.

(5) that the mahants have been in possession and management of the asthal and the properties all throughout;

(6) that the mahants acquired properties from time to time in their own names as proprietors and never in the names of the deities or the asthal, without any objection at any time from any one and dealt with some of them through deeds of sales, mortgages, leases etc."

Before this Court reliance was placed on the following circumstances to prove that the properties were impressed with a trust for religious or public purposes :

"(1) the fact that the mahants were vaishnav bairagis who were life long celibates;

(2) that sadhus and others were given food and shelter when they visited the temple;

(3) that festivals and other important Hindu dates used to be celebrated;

(4) that the members of the public came to the temple for darshan without any hindrance and as of right;

(5) that in the deeds and wills, whereby reigning mahants appointed or nominated their successors, the properties were described as appertaining to the asthal, and that the temple being the dominant part of the asthal and maintained for the worship and puja of the presiding deities installed therein, the properties belonged to the temple, and therefore, they were properties of a trust for religious and charitable character.

(6) The idols were installed partly on a pedestal and the temple was constructed on grounds separate from the residential quarters of the Mahant".

It was held by this Court that everyone of the circumstances was equally consistent with the character of the trust being public or private and that the onus which was on the Bihar State Religious Trust Board to establish the public nature of the trust had not been discharged.

In view of the submissions of the learned counsel for the appellant, it is necessary to refer to the findings of the High Court in the present case. The High Court found that there was no evidence to show who the founder of the Mutt was and who built the temples.

It was also found that there was no evidence to show that the temple in the village of Dumri was constructed on the land belonging to Gurdyal Singh or that the temple in the village of Maudah was constructed on land belonging to Brahmdas. It was found that several properties were acquired by various Mahants in their names instead of in the names of the idols but the acquisition of properties was for the purposes of the Asthal or Mutt. It was also found that from time to time gifts of land had been made by the villagers of Dumri. It was found that the Mahants had executed Kebalas for effecting repairs of the temples and had similarly executed deeds of mortgage. It was found that the people of the villages of Dumri and Maudah used to visit the temple without any let or hinderance and that the Mutt was so located as to suit the convenience of the villagers of both Dumri and Harpur. It was situated on the boundary of the two villages and was on a platform at a certain height, open on all sides with plenty of space around it. The temple in the Mutt had three doors with space for visitors. It was noticed by the High Court that the lands were held rent free in consideration of religious services.

It is true as submitted by the learned counsel, many of the circumstances are neutral. The fact that members of the public were permitted to go to the temple without any hindrance might not be a circumstance which by itself would conclusively establish that the temple was a public temple in the absence of an element of right in the user of the temple by the public. Conversly the free use of the properties of the temple by the Mahant at a time when he was the sole manager of the temple and its properties would not necessarily lead to the inference that the temple was not a public temple. Patently there can be no simple or conclusive factual tests to determine the character of a trust. The totality of the circumstances and their effect must be considered. Here not only do we find that members of the public were allowed free access to the temple, they were evincing much greater interest in the institution as evidenced by the circumstance that several villagers had made gifts of land to it, a circumstance which would ordinarily be consistent with the nature of the institution being public and not private. Again, as pointed out by Venkatarama Ayyar, J., *Deoki Nandan* v. *Murlidhar*,(1) the situation of the temple would be an important circumstance in determining whether it was private or public. The High Court has pointed out that the temple was constructed outside the village on open land between the villages of Dumri and Harpur so as to be convenient to the villagers of both the villages. It was constructed on a high platform and was open on all sides with

(1) [1956] S.C.R. 756.

A plenty of space around it to accommodate large number of people. Obviously the temple was located and constructed so as to attract and accommodate large number of villagers from the two villages. The donation of land by members of the public to the institution and the location of the temple at a place freely accessable and convenient to the public were circumstances which were absent in *Bihar State Board* B *Religious Trust, Patna* v. *Mahant Sri Biseshwar Das* (supra). We are satisfied that, in the circumstances the High Court was right in holding that there was a trust of a public nature. The appeal is, therefore, dismissed with costs.

N.V.K. *Appeal dismissed.*