

(2019) 07 MP CK 0057

In the Madhya Pradesh High Court

Case No : Review Petition No. 620 Of 2019

Akhilesh Kumar Jain

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Citation : (2019) 07 MP CK 0057

Hon'ble Judges : Sanjay Yadav, J; Vivek Agarwal, J

Bench : Division Bench

Advocate : Sunil Jain, Pratip Visoriya

Final Decision : Dismissed

Judgement

There is a delay of 65 days in filing the review petition, condonation whereof is being sought vide I.A. No. 1803/2019.

Taking into consideration the stand taken in paragraph No.2 of the application, which prevented the petitioner from filing the petition within the period of limitation, sufficient cause is made out. Consequently, delay condoned.

I.A. No. 1803/2019 stands disposed of.

The Writ Petition, which was a Public Interest Litigation, was filed making complaint against respondents No.5 to 8 (in Writ Petition) of having

grabbed and encroached upon the land granted on â??Muafiâ? to the temple â?" Mandir Shri Ramjanki situated at Chhaparwala Pul, Lashkar,

Gwalior, with a direction to respondents No.1 to 4 (in Writ Petition) to ensure that the temple in question is not closed down or demolished and the

Government property is not grabbed/ captured by respondents No.5 to 8 (in Writ Petition). Further direction was sought that a Priest be appointed in

the temple and a further detailed enquiry in the entire matter be directed to be

conducted.

Petitioner, who was an Officer-in-Charge of the case representing respondents No.1 to 4 (in Writ Petition) filed return on 24/06/2016 on affidavit

wherein in paragraph 8, following contentions were made:-

Content of ground paras of this petition are mere repetition of earlier facts, does not call for any further reply. It is pertinent to mention here that

as stated in above paras, aforesaid, the temple in question is not owned by the State Government, whereas the same belongs to Respondent No.5 to

7. However, detailed reply of all these grounds have already been narrated in the aforementioned paras of this return, hence needs no reply again.

In reply to paragraph 1, following contentions were made:-

In this regard it is respectfully submitted that the aforesaid temple in question is not a government temple, same is owned by Respondent No.5 to

7. The contention of the petitioner that 'Nemnuk' has also been given to the aforesaid temple, but the same fact is not correct hence denied. The

'Nemnuk' is not being provided to the temple in question.

Later on, the said return filed by the State was sought to be withdrawn by moving an application on the ground that wrong averments were adverted

to in the return. Leave was also sought to file fresh return. The prayer was allowed. Respondents No.1 to 4 State of Madhya Pradesh and its

functionaries, were permitted to withdraw the return with a liberty to file fresh return. Consequently, fresh return was filed stating therein that

Collector Gwalior after holding an enquiry found that temple in question belongs to Muafi Aukaf Department, State of Madhya Pradesh and the land in

question was granted to said temple. It was also found that, in respect of land in question, a suit was pending between the tenants and one Sita Devi in

the Court of First Civil Judge, Class-II, Gwalior, forming subject matter of Case No. RCSA 00072/2016.

In these fact situation, the said Writ Petition came to be decided on 23/01/2019 in the following terms:-

10. In the above backdrop, after hearing learned counsel for the parties, this court deems it appropriate to dispose of this PIL in the following

terms :-

(i) As State Government has already filed a Civil Suit for cancellation of registered sale deed, which has been executed in relation to a government

land (Muafi Temple land), it will make all the endeavours to take the suit to its logical end and protect the government land from being usurped by the land Mafia.

(ii) Since the lis between the parties is to be decided by the Civil Court, therefore, for the present, no effective writ can be issued in the present writ petition as regards the land of the temple.

(iii) Lokayukt Establishment shall expedite the inquiry and shall take it to logical conclusion, if possible within six months from the date of communication of this order.

(iv) State Government will be free to take action against all the delinquent officers including Akhilesh Kumar Jain, who was posted as SDO (Revenue)

Lashkar, Gwalior on 21.6.2016 at the time of swearing in of the affidavit in support of the reply declaring the government land to be a private land and misleading the court by filing incorrect and inappropriate reply.

(v) For this purpose a copy of this order and the replies which have been filed by the State one under the signatures of Shri Akhilesh Kumar Jain and

another under the signature of Shri Vinod Kumar, be supplied to the Chief Secretary of the State so also the Principal Secretary of General

Administration Department for necessary action.

(vi) Necessary action be completed within a period of six months from the date of receipt of copy of this order.

(vii) Chief Secretary of the State shall be obliged to furnish copy of action taken report in the matter before Registry of this court immediately on expiry of six months or on or before 1st August 2019.â??

Petitioner vide present petition seeks review of said order. It is stated that on his appointment as Officer-in-Charge by Collector, Gwalior to file reply,

he issued direction to Officer-in-Charge of record vide letter dated 11/02/2016 to get the information with regard to file of settlement (Nasti) Samvat

1997 along with copy of present khasra along with the report furnished by Tahsildar on 16/02/2016. It is urged that Naib Tahsildar, Lashkar Gwalior

submitted his report vide communication dated 16/02/2016, mentioning therein that the temple is situated over survey No. 733 and one temple Shri

Ramji and Mahadev Ji Panchayat Jinsi Nala Lashkar is a Muafi temple. It was reported that temple Shri Ram Mandir situated at Phalka Bazar

Lashkar is not having detail of Pujari/ Namnuk in Aukaf Department. It was also written that No Objection Certificate is issued by Nazul Office and

as per No Objection Certificate of Nazul, Shri Ram Mandir does not belong to Aukaf Department.

It is urged that on the basis of information received, petitioner drafted and filed the return stating therein that the temple in question is not owned by the State Government, as adverted to him by the Department.

It is contended that later on, the petitioner came to know through the rejoinder filed by respondents No.11 & 12 (petitioners in Writ Petition) that the

temple of Ramjanki is situated at Jaripatka and not in Phalka Bazar Lashkar. It is urged that since the petitioner was new to Gwalior, he was not

aware of difference of the fact as regard to location of temple in question. Accordingly, got the return drafted and presented in the Court.

It is urged that there was no malafide intention of the petitioner to have give a wrong statement in the return which was later on withdrawn.

On these factual submissions, the petitioner seeks review/ modification of the order to the extent that it record findings against the petitioner.

After hearing learned counsel for the petitioner at length and giving thoughtful consideration to the submissions made and after perusal of entire

record, we are not convinced with the contentions put forth on behalf of the petitioner that the information given in the return filed on 24/06/2016 was

not deliberate and was bonafide and the mistake occurred because he was new to Gwalior. The petitioner was the Officer-in-Charge and was in

control of entire revenue record. Besides being in control of revenue record, was also custodian of Government property which he was supposed to

protect in larger public interest. It was not expected of the Senior Officer like the petitioner to have casually deal with the matter as the present one.

Therefore, the liberty granted to the State Government that they are free to take action against the petitioner, cannot said to be error apparent on the

face of record, as would warrant any indulgence.

Consequently, review petition fails and is dismissed.

All interlocutory applications stand disposed of.