
(2015) 06 RAJ CK 0003
In the Rajasthan High Court
Case No : PIL Petition No. 1091 of 2015

Bhagwati Prasad Deshwal and Others	APPELLANT
Vs	
State of Rajasthan and Others	RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 32, 33, 70, 72

Citation : (2015) 4 WLN 260

Hon'ble Judges : Sunil Ambwani, C.J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Prateek Kasliwal and Vimal Choudhary, for the Appellant; Vishal Sharma on behalf of N.M. Lodha, Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been filed, in public interest, with the following prayers:--
"A. Issue an order or direction to stay the construction operations of the temple on the land reserved place for school premises.
B. Issue an order or direction to cancel the shifting of panchwati temple, Rajapark to a public school.
C. Issue an order for the cancellation of the allotment of land for the purpose of temple from the school premises.
D. Issue mandamus or any other appropriate writ order to stop operations or shifting of temple to an unauthorised place."
2. The writ petition is filed with an urgent motion, to stop the construction of a temple in the playground of the school, purported for relocating the temple, which was allowed to be constructed on the busy intersection of the City. On 22.01.2015, we had passed the following order:--

"Heard learned counsel appearing for the petitioners.

This writ petition has been filed by the petitioner No. 1, who is a retired Professor of the Government Sanskrit College, and petitioner No. 2, a Society committed towards welfare of the students of the Government Senior Secondary School, Panchawati Circle, to stop the construction of a temple to be relocated inside the school premises.

It is stated that a temple by the name of Mandir Mata Vaishno Devi was illegally constructed on public land. On the complaints made by the local residents on the construction of the temple in the residential colony disturbing the piece of the colony, which included flocking of beggars, the State Government decided to relocate the temple. Instead of relocating the temple at site, which may be appropriate for construction of a temple, the State Government decided to allot the land of the playground in the school nearby the temple, for construction of a temple building.

It is submitted that the decision of the State Government, to allot the land admeasuring 2850 square feet land, in which the Rajkiya Ucch Madhyamik Vidhyalaya, Adarsh Nagar, Panchwati Circle, Jaipur is wholly illegal, arbitrary and amounts to taking away the rights of the children studying in the school, for relocating the unauthorised constructions of the temple, which was allowed to be raised on a public land. The State Government has acted wholly arbitrarily and unreasonably in allotting the land of the school for construction of temple. The playground for the students of the school has been compromised, for relocating illegal constructions, with no public purpose to be achieved.

Let notices be issued to all the respondents. Since all the respondents are State-respondents, except respondent No. 5, the notices will be served on them through the office of learned Advocate General, Rajasthan High Court, at Jaipur, which will be sufficient service on them. Notices will be sent to respondent No. 5 by registered post. In addition, the notices will be served dasti summons on respondent No. 5.

List again on 09.02.2015.

Until further orders, construction of the temple in the land allotted in the school by the Jaipur Development Authority on a No Objection Certificate issued by the State Government (annexed as Annexure Nos. 2 and 3 to the writ petition), shall remain stayed."

3. On 23.03.2015, the respondent No. 5 was directed to restore the boundary wall of the school within a week, and if the boundary wall was not restored, the Court will proceed against the Society for action of contempt, and for imposing exemplary damages.

4. After exchanging the affidavits, an order was passed on 28.04.2015 as follows:--

"A reply has been filed by the Jaipur Development Authority. Learned Advocate General appearing for the State of Rajasthan prays for and is allowed two weeks" time to file reply. A reply has also been filed by respondent No. 5.

List again on 18.05.2015.

In the meantime, the petitioners will also file rejoinder-reply to the replies filed by the Jaipur Development Authority and the respondent No. 5.

An objection has been raised by learned counsel appearing for the respondent No. 5, that the petitioners also have a Temple, namely, "Shri Sidheshwar Mandir", which is closed to the land, where subject Temple is situate, and is sought to be relocated. It is submitted on behalf of the respondent No. 5, that the petitioners have not disclosed existence of the Temple, managed by them, and the area allotted to them, as well as the permission obtained by them under the Rajasthan Religious Buildings and Places Act, 1954, which is running the Temple, and further details.

D.B. Civil Misc. Application (IA No. 13225/2015) was filed by Shri P.N. Maindola appearing in person, challenging the order of the Cabinet of the State of Rajasthan, No. 148/2010 dated 04.09.2010, in pursuance to the orders issued by Hon"ble Supreme Court in SLP No. 8519/2006 (Union of India v. State of Gujarat and Ors.), in which directions were given, that the State Government restraining the unauthorized constructions, permitted in the name of Temple/Church/Mosque/Gurudwara etc., on public road, public streets, public parks, or other public places. The directions also required the State Governments and Union Territories to formulate a comprehensive policy, regarding removal/relocation/regularization of the unauthorized constructions within six weeks. The orders also directed the State and Union Territories to identify unauthorized constructions on roads, streets, public parks and public places, within six weeks.

It is stated in the application filed by Shri P.N. Maindola, that in pursuance to the directions issued by Hon"ble Supreme Court on 29.09.2009 and 16.02.2010, the State of Rajasthan issued an executive order, framing a policy, in which the constructions in the name of Temple/Church/Mosque/Gurudwara, or for any other religious purposes, have been classified into two categories. The first category relates to unauthorized constructions made on the land, which is not reserved for any particular purpose, nor the unauthorized constructions are affecting any public passage, or causing any inconvenience to the general public. In such cases, a decision was taken that the allotment be made by the concerned department/local body, to the concerned Trust or registered Institution, on conditions, which may be specified by the State Government.

The second category relates to those unauthorized constructions, which have been made on roads, and for that purpose, the State Government has decided, that it may be considered, as to whether the road should be realigned, or that, any alternative arrangement be made for traffic, and if it is possible to realign the road, by way of alternative arrangement, the land under construction may be

allotted to the concerned Trust/registered Institution. In all other cases, steps will be taken, and where the Trust/registered Institution is not agreeable to shifting, to take steps under the Rajasthan Religious Buildings and Places Act, 1954, for removing the unauthorized constructions.

The policy dated 04.09.2010 also provides that in future, the development authorities and the local bodies will take care that in the sectors/schemes developed by them, sufficient number of land and plots are reserved for constructions for religious purposes.

The applicant appearing in person has challenged the policy of the State Government, on the grounds that it is in violation of the Rajasthan Religious Buildings and Places Act, 1954, which provides for prior permission of the Collector under Section 6, and that, all the constructions, which are without permission, are to be declared as unauthorized. The policy, according to the applicant, is also against the various statutes, concerning the local bodies, such as Jaipur Development Authority Act, 1982, providing for powers under Sections 32, 33, 70 and 72, for dealing with unauthorized constructions, which cause encroachments and obstructions on public land, Rajasthan Public Parks Act, 1956 and the Municipal Bye-laws.

It is submitted that the policy framed by the State Government on 04.09.2010 has not been submitted in the Supreme Court, for its consideration.

We are informed that in the affidavit of the Chief Secretary, Government of Rajasthan, filed in SLP No. 8519/2006 (Union of India v. State of Gujarat and Ors.), the State of Rajasthan has identified 58,253 unauthorized constructions raised for religious purposes, in the name of Temple/Church/Mosque/Gurudwara etc. on public streets, public parks and other public places. The reasons, as to how such large number of constructions on public places were allowed to be raised, despite the progressive law, namely, Rajasthan Religious Buildings and Places Act, 1954, was not brought on record, and that, instead of demolishing them, an attempt has been made, in a secular State to permit these constructions, by dividing them into categories of convenience to regularise them.

It is submitted that the executive policy is in direct conflict and in violation of the statutory scheme, which prohibits raising of any constructions on public land, public roads, public parks etc., for religious purposes, and in any case, no construction could be raised without permission.

Considering the importance of the matter, we direct that D.B. Civil Misc. Application (IA No. 13225/2015) filed on 11.03.2015 will be registered as a separate D.B. PIL Petition, and will be tagged with this D.B. PIL Petition No. 1091/2015.

The State of Rajasthan, through Chief Secretary, State Secretariat, Jaipur, Jaipur Development Authority through its Commissioner, Jaipur Municipal Corporation through its Commissioner and the Collector, Jaipur will be impleaded as party

respondents in this petition. Since notice of the application has already been received by the respondents, the State of Rajasthan as well as the Jaipur Development Authority and Jaipur Municipal Corporation will file their replies, within two weeks. Rejoinder-replies will be filed within one week thereafter.

The registration of D.B. Civil Misc. Application (IA No. 13225/2015) as petition in public interest, has taken care of the objections raised by learned counsel appearing for the Jaipur Development Authority, to the making of an application in writ petition, challenging the policy.

Prima facie, we are satisfied that the second category carved out in the policy of the State Government, No. 148/2010 dated 04.09.2010, for considering the realignment of the roads, where constructions of religious nature have been raised on the public roads etc., is grossly arbitrary, unreasonable and fails to take into consideration the statutory scheme of the various Acts, referred to as above, under which no such constructions is permitted. We thus, stay the executive instructions, with regard to the second category of the policy, namely, where it is provided that where such unauthorized constructions have been raised on the public roads etc., a consideration may be made for realignment of the road, or for any other alternative scheme, something, which is not permitted at all, under law, and obstructs the traffic. Such offending constructions, of whatever nature, cannot be permitted to be regularized, by providing realignment of the road, or any other alternative arrangement. Such constructions must be removed at all cost.

Let both the matters come up for orders on 18.05.2015."

5. From the affidavit of the JDA, we find that in order to relocate the temple, the playground of the school was resumed from the Education Department, at a cost of Rs. 15 lacs, but that thereafter there is nothing on record to show that any permission was applied for, or was given for the proposed constructions of a temple on such land. The respondents have neither averred nor placed on record any application of allotment; the allotment order or lease and permission of the Collector, or JDA to reconstruct the Temple.

6. It is not denied that two adjoining temple structures are in existence at the centre of the road junction, causing serious traffic problem at the Panchwati Circle, Raja Park, Jaipur. Under the directions of the Hon'ble Supreme Court, dated 27.07.2010, in Special Leave to Appeal(Civil) No. 8519/2006- Union of India v. State of Gujarat and Ors., these temples were required to be relocated long ago, but no steps were taken for their relocation. Instead, a policy decision was taken by the Cabinet of the State of Rajasthan, which has been referred to in our order dated 28.04.2015, and in which an absurd decision was taken for realignment of the road to save the temples. We have already stayed such policy, which is clearly against public interest.

7. We do not find any assertion, either by the JDA, or by the respondent No. 5, that any application was made for allotment of the land for relocation of the

temple, and that there is any allotment of land to the Society, or any permission before it started reconstructions on the land resumed from the school, used as playground from Education Department by JDA.

8. In this writ petition, we are concerned with the obstruction of a busy public road by construction of temples, which should have been relocated immediately after the order passed by the Hon'ble Supreme Court in Union of India v. State of Gujarat and Ors.(supra), dated 27.07.2010. According to the affidavit given by the State of Rajasthan in the Supreme Court, there are 58,253 unauthorized constructions in the State for religious purposes, in the name of Temple, Church, Mosque, Gurudwara etc., on the public streets, public parks and other public places.

9. In this writ petition, the prayers are to remove constructions of the temples, which were allowed to be raised in the middle of the road, on the busy intersection at Panchwati Circle, Raja Park, Jaipur, causing serious traffic jams on the road, in the commercial area.

10. The Raja Park is one of the busiest commercial area in the City of Jaipur. The constructions of temples have caused serious traffic problems in the City for last so many years. The resumption of the land of the school, was a questionable solution for relocation of the temple in the same area, inasmuch as the playground of the school is extremely important for development of the health of the children. In any case, now since the land has been resumed at the cost of Rs. 15 lacs, the temples may be relocated, provided the Society, which runs the temples, makes an application for allotment and the land may be allotted to it, and further that a permission is taken for making the constructions from the Collector, Jaipur and JDA in accordance with its bye-laws. The constructions of the temples can be made only after the building plans are sanctioned by the JDA.

11. The Rajasthan Religious Buildings and Places Act, 1954 (for short, "the Act of 1954") was enacted to regulate the construction of public religious building, and to restrict the use of public places for religious purposes. The Act of 1954 defines "building", "place", "public", "religious", and thereafter Section 5 raises restrictions on use of public places for religious purposes. The constructions of public religious buildings under Section 6, is permissible only after obtaining written permission of the Collector. Sections 5 and 6 of the Act of 1954, are quoted as below:--

"5. Restrictions on use of public places for religious purposes. - (1) No person shall use any public place -

(a) as a permanent religious place, or

(b) save with the previous written permission of the Collector obtained in the prescribed manner, as a temporary religious place.

(2) Nothing in this section shall apply to cremation grounds and burial places or to the holding of functions or the taking out of processions, in connection with

deaths or marriages or to other purely social and secular functions or to religious processions.

6. Constructions etc. of public religious buildings.-

(1) No person shall without first obtaining the written permission of the Collector-

(a) construct any public religious building,

(b) convert any private or public building or place into a public religious building,
[or]

(c) destroy, damage or transfer any public religious building or place.

Explanation.-The temporary use of a building or place for religious purposes on occasions such as Holi, Moharram and the like shall not be deemed to be the conversion thereof into a public religious building.

(2) A person desirous of obtaining permission for any of the purposes mentioned in Sub-section (1) shall first obtain permission from any local authority or officer having jurisdiction over the area where the building or place in question lies and thereafter such person shall apply to the Collector for the requisite permission in the prescribed manner."

12. In the present case, we do not find any assertion, either by the JDA, or by the respondent No. 5, that any permission was taken for construction of the temples from the Collector under the Act of 1954. The constructions are, thus, wholly unauthorized, and cannot be allowed to stand in the middle of the road on the busy intersection of the City, despite the order of the Hon'ble Supreme Court, dated 27.07.2010, in Union of India v. State of Gujarat and Ors.(supra).

13. We have already taken notice of the large scale of unauthorized constructions raised for the religious purposes, in the connected D.B. Civil Writ Petition(PIL) No. 7365/2015, and in which, once again time has been sought on behalf of the State of Rajasthan to file reply.

14. Learned counsel appearing for the respondent No. 5 states that the disputed temple is existing on the spot for last many decades, and that the people of the area have faith in the deities installed in the temples. He submits that though the temples were constructed without any permission, but the State Government is making efforts to relocate the temples, for which the JDA has resumed the land from the Education Department, and for which, it has paid Rs. 15 lacs. He submitted that the decision was taken in the meeting of the JDA, to relocate the temple, and on which the constructions were started.

15. We do not find any substance in the contentions of learned counsel appearing for the respondent No. 5, inasmuch as he has neither filed the documents establishing that any society is in existence, which is running the temple, nor any documents have been annexed to show that permission was sought, or has been obtained, and that the land was allotted, or permission thereafter was taken from

the Collector for construction of the temple. In the reply filed by the respondent No. 5, there is no whisper of these facts.

16. In the facts and circumstances, we find it just and expedient, in the larger public interest, to allow this writ petition, with direction to the respondent No. 5 to remove the constructions of the temples, within a period of six weeks. If the temples are not removed, the Collector, Jaipur will remove the constructions of the temples, which are connected with each other, from the Panchwati Circler, Raja Park, Jaipur, within two weeks thereafter.

17. Considering the blatant violation of the provisions of the Act of 1954, we also direct the respondent No. 5, to deposit a sum of Rs. 5 lacs, as costs, for disobeying the orders of Hon"ble Supreme Court, and for causing inconvenience to the public, and for raising unnecessary and unacceptable defence in the writ petition, to delay the proceedings of the Court.

18. We may also observe here that Section 72 of the Jaipur Development Authority Act, 1982, and Section 11 of the Act of 1954, provide for offences and punishments, in which an abetment for contravention of any of the provisions of the Act or the Rules, is punishable with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred or with both. The JDA Act, 1982 makes the offence of unauthorised construction non-bailable and non-compoundable. The Collector is authorized to take steps under Section 11A of the Act of 1954, to remove the unauthorized work, and to initiate proceedings for offences and punishments under Section 11 of the Act of 1954.

19. Since the Collector, Jaipur and Jaipur Development Authority have not taken any steps so far, we direct them to take immediate steps against these two temples to demolish the constructions, and also to initiate criminal prosecution for unauthorized constructions of the temples in the City of Jaipur, within a period of two months.

20. The cost of Rs. 5 lacs (Rs. Five lacs) will be deposited by the respondent No. 5 with the Collector, Jaipur within a period of six weeks, failing which the Collector shall initiate proceedings for recovery of the arrears of land revenue.

21. The writ petition is, accordingly, allowed.