

(2022) 08 J&K CK 0066

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1206 Of 2014

Dharmarth Council And Others

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 31-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 31, 226, 300A

Citation : (2022) 08 J&K CK 0066

Hon'ble Judges : Mohan Lal, J

Bench : Single Bench

Advocate : R.S. Thakur, Ashwani Thakur, Vasharan Thakur, Vasharan Thakur

Final Decision : Disposed Of

Judgement

Mohan Lal, J

1. Petitioner No. 1 represented by it's President, Major General (Retd.), R.S. Jamwal (AVSM) who manages and administers the affairs of Shri Raghunathji Temple a conglomerate of nemours temples and deities housed in a complex of which Shri Raghunathji is the owner of the buildings and lands comprising the said complex situated at Jammu within the State of Jammu & Kashmir, and petitioner No.1 is the council manned by the permanent residents of State, therefore, the constitutional, statutory and legal rights guaranteed by the constitution of India and that of the State and the laws made there under are available to them, hence, are entitled to invoke the jurisdiction of this court under Article 226 of the Constitution of India and seeks the directions to the respondents and prays for the reliefs in the following manner:-

"Petition for a writ, order or direction in the nature of Certiorari or any other appropriate writ seeking to call for the relevant record and direct the concerned respondents to cause to be vacated by the security forces the land and accommodation in any event the extra accommodation and vacant land, beyond the requirement of the security of the Mandir of Raghunathji (Raghunath Mandir)

Jammu being about 15000 Sq.ft. built up area and more than 12 Kanals of open land presently occupied by the Jammu and Kashmir Police and Indo-Tibetan Border Police (ITPB) and used the premises as Transit Camp for the force, and thereby, to leave the same free for use of Dharmarth Trust as used before for religious and spiritual purposes, viz; Satsung, Spiritual discourse, recitation of the Bhagwat Gita etc. all on regular basis and accommodating pilgrims visiting the temple from different parts of the country and to pay rental compensation at the market rate, which is on the average anything more than Rs. 55/- per sq. ft. per month to the trust for the entire period from the date of occupation of the premises by the security forces until vacation of such occupation by them and also compensation for the services the trust has been forced to provide in the said premises, including as regards sanitation electric and water supplies in the said building and the open area, and also pay off the pending liability on account of flat electric bills, reimbursing at the same time the expenditure already incurred by the Trust on that account and also cause to be vacated the premises of Hariparbat, the Kali Mata Temple, the Guptganga, the Shiva Temple in Kashmir and rental compensation for the same for the period of occupation at the aforesaid rate and compensation for loss and damages for harassment and inconvenience, paid all alongwith interest at the market rate and to grant any other writ, order or direction that this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the present case"

2. Petitioners have averred, that in the aftermath of the militant attack on the said place of worship on 30th March, 2002 and then on 24th November, 2003, need came to arise to review the security in the area responsive to the threat perception and consequently, to strengthen the security and upgrade vigil in the area of location of the temple, the security forces in that backdrop moved into the temple complex in the year 2003, apparently, for the security purpose responsive to the threat perception, and in due course occupied about 15000 Sq. ft. build up area and 12 Kanals open land of Sh. Raghunathji in the said temple complex.

3. It is averred, that the Security Forces, precisely, the J&K Police and the Central Reserve Police Force, which later on came to be replaced by ITBP, thus, came to occupy a large accommodation built up, which was used for Sat Sung, Spiritual discourse and other religious and spiritual activities on regular basis and ever since the area, which is in occupation of the Forces has forced cessation of the said activities. The trust from the very beginning has been pleading with the concerned respondents that the occupation of the said premises had been prejudicially affecting the maintenance, upkeep and welfare of the temple complex besides violating the religious and spiritual sanctity of the place and drawing up to a large extent the resources of the temple badly needed not only for the upkeep and welfare of the complex, but also for maintenance and upkeep of the other religious endowments and places of worship of the trust, that have no income or have too little to sustain themselves. The cessation of satsung, spiritual discourses, recitation of the Bhagwat Gita and other religious and

spiritual activities had not only dried up the resources of the temple, but also reduced the richness of the environment.

4. It is moreso averred, that the said premises are being used as transit camp and used to house a large contingent of hundreds of security personnel at its cost and expense. The Security Forces paid not a single penny on account of rent, electric charges, maintenance and upkeep, cleanliness and sanitation during all this period of their occupation of the said premises and it was pointed out that the Security Forces could not usurp the property of the trust or cost a financial burden on it. The respondents have not so far responded to the pleadings of the trust positively or favourably.

5. It is stated in the writ petition, that the concerned authorities dilly-dallied on response to the communication and representation of the trust on the subject and ultimately, came out with a stance stuffed with arrogance, arbitrariness and negativity, conveyed by the respondent No. 3, i.e., Director General of Police, Jammu and Kashmir, Jammu vide his order No. BDR-07/2009/3951-54 dated 14th December, 2012, treating the request of the latter for the rent of the said premises with disdain and turning the same down on the plea that "the department only provides security to these premise (shrines) from arson and vandalism and the concerned trust is supposed to provide the rent free accommodation to the security personnel". The aforesaid response of the respondent No. 3 is antithetic to the rule of law and is arbitrary, unreasonable and unfair, as it undermines the constitutional guarantees, more particularly, the right of life and personal liberty, as enshrined in the Constitution of India, which provides that the government demand on its subjects to provide rent free accommodation and free sanitation and other services to the security forces and it is unjustified for the security forces to occupy the area and accommodation beyond the requirement of deployment of forces, which is tantamount to usurpation of the premises itself. The right to property, as enacted under Article 31 of the Constitution of India, as it was before its deletion from the Fundamental Rights Chapter continues to apply with the same vigour and force in the UT of Jammu and Kashmir, however, Article 31 of the Constitution of India does not exist in rest of the country and is replaced by Article 300-A, which is a constitutional guarantee.

6. Petitioners have stated, that the safety and protection of the subjects and their properties is the responsibility of the State/Government and for that matter, the Security Forces cannot usurp the property of the individual or the institution, but for other organizational requirements of the force, according to the standard norms and procedure, it may be 10 to 15 personnel and not 100 to 200. The presence of the Security Personnel in the said premises at all times is more than hundred and sometimes, even two hundred and the trust has been and is catering to their sanitary, water and electric needs and requirements. The trust has been discriminated against in that the huge funds available to the government and the Security Forces for security related spending in the UT,

which includes expenditure on rental and compensation for use and occupation of private accommodations have been utilized for paying rental and compensation for such private accommodations in Kashmir. The Trust is being singled out for hostile treatment and that with the continued presence of a large number of security personnel in the accommodation, where satsung and other spiritual and religious activities used to be carried out on regular basis by visiting pilgrims from different parts of the country has substantially decreased, which has prejudicially affected and dried up the resources of the temple. The contention of the respondents that they provide security to protect the Trust from "arson and vandalism" and the Trust is supposed to provide rent free accommodation to the security personnel is untenable and contrary to all norms of civilized behaviour of a civilized democratic government and is antithetic to the concept of a welfare State.

7. It is averred, that Sh. Raghunathji Temple is a famous seat of religious activity and spiritual attainment, where people throng not only from all parts of the country, but also from the world. It is an ancient temple and very sacred to the followers of sanathan dharma all over the globe and its sanctity has to be maintained at all costs. It is a very important landmark in the city of temples, a spiritual lifeline of the devotees and great pride of the people of the State, as it gives recognition to the city of Jammu in particular and the State in general.

The location of the temple is prime and ideal being in the heart of the city and the premises in occupation of the security forces is invaluable and by conservative estimates, fetch rental not less than Rs. 55 per sq. ft per month. The Trust has made a demand for the rental, at least, at the said rate. The Trust has suffered loss in terms of income that would have accrued to it, if the same had not been occupied by the Security Forces and were free for use by it for the purposes it was meant and had been used before and also in terms of the additional financial burden come upon it from the heavy electric bills, maintenance and other services it provides in the premises and also on account of the damage to the building and footpaths in the area of occupation and the same ought to be made up and compensated for. The huge electric bills of the said accommodation and the premises running into lacs of rupees, that Trust has had already paid and the remaining for more than Rs. 20,00,000/- (Rupees Twenty Lacs) is still pending liability, which continued to swell day by day. The Trust made a demand on the aforesaid accounts on the respondents, but the same has failed to evoke response from them.

8. It is averred by the petitioners, that respondent No. 3-Director General of Police, J&K, Jammu at one point of time, had requested the Deputy Inspector General of Police, Jammu-Samba and Kathua range vide his communication No. BDR-07-2009/3955-57 dated 14th December, 2012 "to see the feasibility of thinning of CRPF/JKP men deployed there for security of the shrine", but unfortunately, nothing has happened and the Trust has been subjected to suffering and the temple complex left losing the sheen of the divine abode. The

Trust is fast slipping into a financial stringency hard enough to cripple the administration of the temple and its complex. The Trust has been pleading with the concerned authorities for causing the premises of the said temples in Kashmir to be vacated and also causing to be paid to the Trust the rental compensation for use and occupation of the same for the entire period of occupation, but the demand so far proved to be an exercise all in vain. The concerned Forces deserve to be directed to vacate the premises of the said temples and also to pay rental compensation for the period of their occupation of the same along with the compensation for damages caused due to its occupation. There is no justification for the Security Forces to occupy and continue to occupy the said premises for decades together, that too, without any rental compensation. They have not paid a single penny on account of rental compensation or otherwise and the entire amount for the entire period of occupation on account of rental compensation and otherwise, deserve to be paid to the trust with interest at the market rate. That petitioner No. 1 served notice on the respondents through its counsel, requesting them once again for causing the premises of the said temples, both in Jammu and in Kashmir, to be vacated and rental compensation, but no meaningful response or action has been taken by the respondents, whereby the Trust continues to reel under the pressure of financial liability. The inaction on the part of the concerned respondents infringes constitutional guarantee. Respondent No. 2 vide his communication to respondent No. 4 bearing No. 601/RA/Misc./224-25 dated 10th May, 2014 informed the Trust that the former had asked the latter to verify and report the facts. A good deal of period has passed even after the said communication, but nothing has happened so far. The aforesaid temples like other shrines, temples, endowments and places of worship, wherever they are, whether in Jammu, Kashmir or elsewhere in the country are great religious and spiritual heritages and the proud legacy handed down by the erstwhile ruling family of the State, which had been looked after, managed and administered by the Trust in accordance with the direction guidelines and wishes of those great souls, who created the said endowments. The followers of Sanatan Dharma have life in the said endowments and they live by and for them. Therefore, there is an onerous obligation, cast on the trust by the deep faith of millions of followers of Sanathan Dharma in the said places of worship to keep up and assure the congenial religious and spiritual environment. The respondents are bound by public duty to cause the aforesaid premises to be vacated and rental compensation and other damages to be paid and the Trust is entitled to the same. The Trust did make a demand, but the same has not been as yet met with any positive response. There is, thus, a cause for invocation of the extraordinary jurisdiction of this Court. No writ or other proceedings regarding this matter has been filed or taken in this Court or in any other Court or forum in the country.

9. Respondents 1& 3 per contra, by filing objections have contended, that after the militant attack on Raghunathji Temple in 2002 and 2003 a part of Raghunathji Temple premises building of Dharmarth Trust was occupied by J&K

Police & Central Security Forces for security purpose in Raghunathji Temple and adjoining areas, pursuant to which police post Hari Market was established, the area of jurisdiction of the said police post is Raghunathji Temple and adjoining areas i.e. Gumat, Karan Market, Hari Market etc. and its purpose is to dominate the area, keep constant vision on anti-national elements, restrict the crime and provide the security. It is contended, that police post Hari Market Jammu setup by J&K Police comprises of 3 rooms, and as per the report submitted by I/C PP Hari Market Jammu at present strength of police personnel deployed in the said police post is 25 for performing security/law and order duties, besides 1 company of ITBP (F-Coy of 59Bn.) comprising about 50 personnel is also deployed for security of Raghunathji Temple which have occupied 2 rooms in the building of Dharmarth Trust and established tents/shed for stay of Jawans and mess in the open area, the security forces deployed in the premises of Raghunathji Temple is for security purpose only and they have not used it as transit camp nor the presence of police/security personnel is in any way causing interference or disturbance in the religious activities in the temple. It is further contended, that the Dharmarth council cannot claim rentals as that being a matter of providing security in view of the prevailing security environment in the UT of J&K, no rental to any public place like temple/shrine is being paid anywhere in the UT of J&K, deployment of security forces in the temple premises is not entitled for any rental claim by Dharmarth council and the facilities like water, electricity, sanitation are to be provided for such deployment by Dharmarth council. It is contended, that the DGP J&K Police has issued directions to DIG J&K Range Jammu to see the feasibility of thinning of CRPF/JKP men deployed for security of shrines, however, J&K Police will take steps for processing the case of the rent payable to Dharmarth Council as per applicable rules, there is no contractual relation of landlord and tenant between the petitioners and the respondents, no rent agreement has been executed between the parties, petitioners have failed to establish their claim for payment of rent of Shri Raghunathji Temple Jammu. Lastly, answering respondents have sought the dismissal of the petition on the grounds, that no cause of action has accrued to the petitioners, none of the fundamental/statutory rights of petitioners have been infringed, petition suffers from mis-joinder and non-joinder of parties as the revenue department being the nodal department relating to matters governed by Indian Trust Act 1882 has not been arrayed as respondent in the matter.

10. I have heard Ld. Counsel for the petitioners, Ld. AAG for the respondents, have gone through the contents of the writ petition, objections filed thereto by respondents 1&3 and relevant law on the subject matter. It is admitted case of the parties, that petitioner No.1 represented by its president Major General (Rtd.) R.S. Jamwal manages and administers the affairs of Shir Raghunathji Temple Jammu which is a conglomerate of numerous temples and deities housed in a complex in Raghunathji Temple Jammu being about 15000 sqft built up area and more than 12 kanals of open land. Petitioner's case is that in the aftermath of militant attack in Raghunathji Temple Jammu on 30 March 2002 and 24

November 2003, to strengthen the security and upgrade vigil in the area of location, the security forces in that backdrop moved into the said Temple complex of Shri Raghunathji Temple Jammu in the year 2003, and in due course of time occupied about 15000 sqft built up area and 12 kanals of open land, and presently the said Temple premises are being used as transit camp of large contingent of security personnel of J&K Police & ITBP (Indo-Tibetan Boarder Police). Petitioner's pleadings would reveal that the occupation of the said Temple premises has been prejudicially affecting the maintenance, upkeep and welfare of the Temple complex and violating the religious and spiritual sanctity of the place as the functioning of satsang, spiritual discourses, recitation of Bhagwat Gita and other religious and spiritual activities have dried up the resources of the Temple and the Temple Trust has suffered in terms of income which would have accrued to it if the same would not have been occupied by the security forces. Averments of the petition and the response submitted by the respondents 1&3 demonstrate that for the occupation of aforesaid Temple premises, the respondents security forces have not paid a single penny on account of rental compensation. Respondents 1&3 have admitted in their response/counter that J&K Police (respondent No.3) will take effective steps for the processing of the case of rent payable to the petitioner's Dharmarth Council. The counter filed by the respondents 1&3 that they are not obliged to pay the rent for the occupation of the premises of the Raghunathji Temple is antithetic to the rule of law, is arbitrary, unreasonable, unfair and it undermines the constitutional guarantees provided to its citizens/subjects under the Constitution of India which provides that the Government's demand on its subjects to provide rent free accommodation and free services to security forces is unjustified. It is born out from the record and from the pleadings of the parties, that the entire premises of Raghunathji Temple Jammu have been occupied/usurped by the security forces of J&K Police and ITBP, and till date no rent has been paid to petitioner's Dharmarth Trust. Respondents (1&3) have admitted that petitioner's Dharmarth Council is entitled for the rent and necessary steps for processing the same have been made. From the pleadings, it is amply clear, that the premise of the petitioner's Raghunathji Temple Jammu have been occupied by J&K Police in the shape of police post Hari Market Jammu having about 25 security personnel deployed therein in 3 rooms, whereas, one company of ITPB (F-coy of 59 Bn.) comprising of about 50 personnel have been deployed there for security purpose who have occupied major portion of the Temple premises and have established tents/sheds therein for stay of jawans, and are also operating mess for providing food/meals to the jawans, therefore, the security forces are not only using the Temple premises for security purposes, but also as transit camp, hence, causing interference/disturbance in the religious activities of the Temple, disturbing the congenial religious and spiritual environment, thereby, dwindling the income of the Temple, as due to the presence of huge number of security forces, no religious activities of the Temple are being performed. For the use and occupation of the Temple premises by the respondents/security forces, the respondents are under statutory duty to pay rent to the petitioners. In view of

the aforesaid discussion, petitioners have carved out a case for issuance of a writ only in the nature of mandamus. The writ petition is allowed. Therefore, an order in the nature of mandamus to the effect, "that the respondents shall assess and keep a security grid comprising of as number of security personnel as required necessarily alongwith accommodation/space for such number of security personnel for maintaining the security of Shri Raghunathji Raghunath Mandir Jammu, with direction to vacate the remaining entire premises of Shri Raghunathji Temple Jammu for use of the Dharmarth Trust for performing religious and spiritual functions, with further directions to pay the rental compensation to the petitioners at the market rate as admissible under rules for the entire period of the occupation/use by the security forces from the year 2002/2003 when the Temple premises of petitioner's Dharmarth Trust were occupied by J&K Police & Central Security Forces (ITBP), is passed in favour of the petitioners as against the respondents".

11. Disposed off accordingly.