

(2003) 08 AHC CK 0129
In the Allahabad High Court
Case No : C.M.W.P. No. 7263 of 2003

Dilip Kumar Sharma and Another	Vs	APPELLANT
Civil Judge (Senior Division) and Others		RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1, Order 40 Rule 2, Order 40 Rule 3

Citation : AIR 2004 All 86 : (2003) 4 AWC 3291

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : B.D. Mandhyan and Satish Mandhyan, for the Appellant; M.K. Nigam, V.K. Burman, Rahul Chaturvedi and H.N. Pandey, for the Respondent

Final Decision : Partly Allowed

Judgement

Sunil Ambwani, J.—By this writ petition, Sri Dilip Kumar Sharma, claiming himself to be Secretary/ Pradhan Mantri of Committee of Management, Sri Giriraj Sewak Samiti, Bara Bazar, Goverdhan, Mathura (in short "Society"), and Shri Devendra Kumar Sharma have prayed for a writ of certiorari for quashing the plaint of Original Suit No. 332 of 1999 pending in the Court of Civil Judge, (Senior Division), Mathura : orders dated 8.11.2002 appointing Dr. Rajesh Singh as Receiver, and orders dated 20.12.2002 and 21.1.2003 by which the trial court has denied non-Gudhanla Brahmins of Bara Bazar, Goverdhan, Mathura, from making bid at the auction of Income of Thakur Giriraj Ji Maharaj Temple (in short "Temple"). They have also prayed for a direction to respondent Nos. 1 and 2 to hold auction of the temple permitting both Gudhanla and non-Gudhanla Brahmins in all future auctions of Tekas as per by-laws and to issue any other writ, order or direction.

2. Brief facts as set out in the writ petition are stated as follows : Sri Giriraj Ji Maharaj Temple was constructed at Danghati, Goverdhan, by Sri Sankatha Baba, a Adivasi Brahmin of Goverdhan. After his death his heirs continued to manage

the temple and perform sevapuja and bhograj which was subsequently divided into four different parts known as "thoks", namely Udho thok, Madho thok, Murall thok and Narain thok. In the year 1957, a society was registered with a constitution including the representatives of all the aforesaid thoks. A twenty one members committee is provided under the by-laws consisting of 6:3:4:4; representatives of the aforesaid thoks and these 17 representatives nominate 4 members. The members of the Committee of Management include both Gudhania and Non-Gudhania Brahmins of Bara Bazar. It appears that some disputes arose between the members and an Original Suit No. 44 of 1970, Har Prasad and Ors. v. Giriraj and Ors., was filed, in which rights of the parties to have a share in the management and the income of the temple was in issue. The suit was dismissed by order and decree dated 15.9.1977 against which a Civil Appeal No. 281 of 1977 was filed. The appeal was also dismissed on 13.11.1981. A Second Appeal No. 649 of 1982 against the aforesaid judgment and decree has been filed and is pending before this Court in which no interim orders have been passed.

3. Elections to elect 17 members of the Committee of Management were held in the year 1998. These members nominated four members in accordance with constitution. Thereafter the election of the office bearers of the Committee of Management were held on 15.4.1998 in which Sri Jamuna Prasad Kaushik was elected as President and Govind Prasad Purohit as Mantri. It is alleged that fresh elections were held for election of members of the Committee of Management on 24.4.1999 in which petitioner was elected as Mantri/ Pradhan Mantri and documents were sent to Deputy Registrar. Firms and Societies Chits, Agra for registration and were registered on 6.11.1999. Sri Govind Prasad Purohit filed Writ Petition No. 48227 of 1999 which was disposed of with direction of Registrar to refer the matter u/s 25 of the Act. The Prescribed Authority by his order dated 11.2.2000 recorded finding that the elections were invalid. Aggrieved Govind Prasad Purohit has filed Writ Petition No. 601 of 2000 which is still pending and no interim orders has been passed. It is contended that elections were also held in 2000 and in these elections also petitioner Dilip Kumar Sharma was elected Mantri/Pradhan Mantri. The documents sent for registration, however, were refused by the Deputy Registrar. It is further contended that in the year 2001 once again petitioner was elected but the list of newly duly elected members of the committee was not accepted by the Deputy Registrar.

4. Original Suit No. 332 of 1999 has been filed by Sri Govind Prasad Purohit claiming to be Mantri/Pradhan Mantri of the Samiti for permanent injunction restraining defendants from interfering in the rights of the plaintiff's society in administration and management of the temple and specially operation of accounts by Govind Prasad Purohit Mantri, Bara Bazar, Goverdhan and for holding meeting, Bhent, thoks and for any other benefits which the Court may deem fit and proper in the circumstances of the case. An application for interim injunction was initially rejected. A Misc. Appeal No. 19 of 2000 was filed which was allowed and the matter as remanded back and in the meantime the parties were directed

to maintain status quo. Aggrieved against the order petitioner filed Writ Petition No. 6162 of 2001 which was dismissed by this Court on 26.6.2001. A contention was raised by petitioner in the said writ petition that during the pendency of the suit fresh elections have been held and that appellate court was not justified to grant any injunction. This Court while dismissing the writ petition makes it open to petitioner to raise these points before the Court concerned which has to consider the matter afresh in pursuance of the order of remand by appellate court.

5. On 27.2.2001, the defendants informed the Court that the High Court has decided the matter on 26.2.2001. It was pointed out to the Court by the plaintiff that the defendants want to adjourn and delay the matter to continue to receive the offerings in the temple. The defendants offered to give statement of account with effect from 16.10.2001 provided plaintiff also gives statement of account up to 16.10.2000. Counsel for the plaintiff agreed to give the accounts provided the account books which have been kept by the Station House Officer Goverdhan under lock in temple area given to him, and requested that the Station House Officer may be required to produce account books. The trial court directed that plaintiff shall produce the accounts upto 16.10.2000. A direction was issued to the Station House Officer Goverdhan to submit his report whether the account books are under his lock and key. By the same order dated 27.2.2001, defendants were also directed to submit account book on 26.10.2000. On 28.3.2001, the trial court found from the report of the police that no such lock, as alleged by plaintiff, has been put by police on the temple and that the police has no control over the temple premises and the record room. Both the parties agreed that senior Advocate Sri Lalta Prasad Garg, may be appointed to prepare a list of documents. With the consent of parties, Sri Garg was appointed as Commissioner to prepare the list of account books with regard to realisation from 10.5.1999 to 16.10.2000 and to produce them in Court and also permit both the parties to put their locks on the room.

6. On 7.11.2002, the trial court considered the application of the defendants dated 28.10.2002 with a prayer to appoint any senior judicial officer as receiver of the temple. The plaintiff did not object to the application. On this application, the trial court directed that the parties may approach the District Judge, Mathura for appointment of any Judicial officer as receiver. The District Judge nominated Dr. Rajesh Singh, Additional Chief Judicial Magistrate (Railways), Mathura and on his nomination, with the consent of parties, the Civil Judge appointed him on 8.11.2002 with the condition that his appointment may be approved by the High Court on the next date. On 13.11.2002, the trial court passed an order that the receiver will take entire charge of the temple from Naib Tehsildar, Mathura including books and accounts and is permitted to spend up to Rs. 10,000 for the management of the temple. He was permitted to take co-operation of one or more persons for management and will be authorised to auction the theka for every month and deposit the amount in the bank account of the temple.

7. Thereafter it appears that several orders were passed with regard to giving permissions to the receiver for management of the temple and its properties and for causing necessary repairs for purchase of pumping sets etc. and to pay salaries to a teacher of college run by Society. The trial court did not take any interest in disposal of application for injunction, in pursuance of the remand order passed by appellate court and affirmed by this Court. On 20.12.2002, an objection was taken by Gudhania Brahmins that non-Gudhania Brahmins do not have a right to participate in the auction as customary auction can be settled only in favour of Gudhania Brahmins. The trial court found that since only Gudhania Brahmins have been taking theka in the past, as an interim arrangement, only they will be allowed to participate and fixed 24.12.2002 for disposal of the application. Thereafter it appears that the said interim arrangement continued. On 21.1.2003, the receiver auctioned the theka for the period 23.1.2003 to 22.2.2003 for Rs. 7,78,000. The said theka was approved by the trial court. On 30.1.2003, the trial court granted permission to receiver to purchase certain articles of silver and idols and to install them after the religious ceremonies. It is at this stage that the defendants have filed this writ petition to quash the plaint and the orders for appointment of receiver and for allowing only Gudhania Brahmins to participate in the theka.

8. On 17.2.2003 while issuing notice this Court observed as follows :

"It is not desirable for a sitting Judicial Officer to be appointed as a "Receiver" on account of the fact (a) that he is answerable to the Court, which is the Court of coordinate Jurisdiction in the same district ; and (b) that he can also be subjected to criminal liability and his personal properties can be made liable in case he fails to submit accounts or fails to pay the amount or to any loss to the property by his wilful default or gross negligence, as provided under Order XL, Rule 4, C.P.C. The parties shall address the Court on the question whether a sitting judicial officer can be appointed as a "Receiver" in any Court proceedings."

9. When the matter came up today, it was found that no reply has been filed by the receiver. Both the parties are not interested in making submissions on the question whether a sitting Judicial officer can be appointed in the Court proceedings. Both of them pointed out that Dr. Rajesh Singh awaiting transfer orders, has resigned and that in the meantime one Sir Vineet Narain, Senior Journalist of Hawala fame, has been appointed by the trial court as receiver on 26.6.2003, Sri B. D. Mandhyan counsel for the petitioner made an application dated 7.7.2003 stating that Sri Vineet Narain has been appointed receiver without Issuing notice to the defendants. It is contended that the resignation of Dr. Rajesh Singh has been accepted and Sri Vineet Narain has been appointed receiver without Issuing notice to defendant only to circumvent the order of this Court and that no notice was issued nor any opportunity was given to make objection to such appointment. It is contended that new receiver has no concern with the temple and is the own man of respondent No. 3 and has been appointed as receiver for their own personal benefits. The orders dated 26.6.2003, annexed

to the applications, shows that the trial court accepted the resignation of Dr. Rajesh Singh and a cheque of Rs. 1,100 as donation to the temple and accepted the application for appointment of Sri Vineet Narain as receiver, on his own offer. He was permitted to spend Rs. 5,000 per month for maintenance of temple. He was appointed on the ground that Sri Vineet Narain is senior journalist residing at Vrindavan and is editor, Kalchakra, Investigative News Bureau.

10. This Court disposed of the aforesaid application vide its order dated 14.7.2003 giving liberty to the defendant petitioner to take objection with regard to appointment of Vineet Narain as receiver as may be open to him in law.

11. Sri B. D. Mandhyan appearing for petitioners, who were defendants in suit, submits that plaintiff-respondent No. 3 has no right to represent the society. The elections set up by respondent No. 3, have not been accepted by Prescribed Authority vide order dated 11.2.2000 and there is no order passed in the writ petition against the order of the Prescribed Authority u/s 25 of Societies Registration Act as amended in U.P. He has not submitted any returns with regard to elections in the year 1999, 2000 and 2001 and thus the suit at his instance claiming to be Mantri of the Society is not maintainable. Respondent No. 3 has no right to represent the society and its affairs. Sri Mandhyan further submits that instead of deciding the injunction application, in pursuance of the remand order of the appellate court as affirmed by this Court, the trial court proceeded to appoint receiver and acted illegally and against the judicial norms in appointing a sitting judicial officer as receiver of the temple. He submits that the receiver started acting illegally and against his authorisation in giving theka and carrying out religious functions for which he had no authority. He excluded non-Gudhania Brahmins from participating in the theka, and, after this Court raised objection with regard to appointment of judicial officer as receiver, the resignation of Dr. Rajesh Singh was accepted and Sri Vineet Narain appointed without issuing notice or inviting objection from petitioner, who is the Secretary of the Society. According to Sri B. D. Mandhyan, petitioner is validly elected General Secretary of the Society, and has right to manage and administer the affairs of the society and the temple.

12. Sri Manish Kumar Nigam appearing for Sri Govind Prasad Purohit, plaintiff-respondent No. 3, submits that respondent No. 3 was elected as President on 30.4.1999. His return was wrongly accepted by the Deputy Registrar and that the order of Prescribed Authority is still under challenge before this Court in Writ Petition No. 9601 of 2000. He denies that any election were held in 2000 and 2001 in which petitioner was elected as Mantri. No election took place as alleged on 1.4.2001 and for office bearers on 8.4.2001. It is submitted by him that in Suit No. 44 of 1970 issues were framed between the parties to the effect whether plaintiff Har Prasad and others had a right to share in the management and the income of the temple and whether the Brahmins of Gudhania and Kunchangia sect alone have a right to manage and share in the offerings. The suit was dismissed. An appeal was also dismissed and the Second Appeal No.

639 of 1982 is pending. According to Sri Nigam, findings was recorded by both the courts below in the said suit that only Gudhania Brahmins had a right to manage and take part in the thekas. He submits that receiver was appointed with the consent of the parties and that no objection was taken to the management by the receiver. According to Sri Nigam Sri Vlnet Narain, Senior Journalist of Hawala fame is public spirited person. The defendants have not taken any objection to his appointment as receiver before the trial court.

13. After hearing counsel for parties and perusing the record, I find that the trial court has completely misdirected itself and took extraordinary interest to appoint receiver and to continue theka without making any effort to decide the application for interim injunction which Includes the right of the plaintiff to represent the society and to file a suit. There have been certain disputes with regard to rights of the parties in the past belonging to Gudhania and non-Gudhania Brahmins. The Original Suit No. 44 of 1970 filed by Late Sri Har Prasad and others was dismissed and the judgment and decree was affirmed in appeal. The issues with regard to the rights of different sects on the management were subject matter of consideration and decided in the said suit. It was held that the constitution of the society in the year 1977 was in respect of Gudhania and Kuchania Brahmins alone and it was only they had right to the exclusion of that non-Gudhania Brahmins. The constitution of the society dated 14.3.1997 was upheld by the Court. The non-Gudhania Brahmins were not held to have a right for realising of amount. Section 92, C.P.C. did not operate a bar to the institution of the suit. These findings are still subject matter of second appeal. Prima facie, these findings operate as res judicata between parties for managing the affairs of the temple.

14. A receiver can be appointed under Order XL, Rule 1, C.P.C. where it appears to be just and convenient, whether before or after decree for management, protection, preservation and improvement of the suit property. Remuneration has to be fixed under Rule 2 and its enforcement is provided under Rules 3 and 4. Receiver, however, should not be appointed without ascertaining the right of plaintiff to file a suit. Where right of the plaintiff to maintain the action and his locus standi to represent the society is in question, the trial court must decide the same before appointing a receiver, unless the trial court finds that the delay in such disposal will defeat the purpose or will result into waste or gross mismanagement. In the present case, the application for interim injunction was rejected. The appeal was allowed and remanded for deciding injunction application afresh. This Court affirmed the order. The trial court as such ought to have first decided injunction application. Both the parties could not show the reasons as to why the trial court instead of deciding injunction application, which necessarily required him to consider the right of Sri Govind Prasad Purohit to represent the society, proceeded to appoint a receiver. The record shows that after appointment of receiver, the trial court did not take any steps in fixing the application for interim injunction for hearing and got busy in deciding applications moved by the receiver from time to time and in arranging for

monthly thekas. He did not even care to decide the application/objection for giving rights to non-Gudhania Brahmins for participating in thekas.

15. Before concluding the matter and issuing orders for deciding injunction applications, it is necessary to consider petitioner's objections of the plaintiff with regard to appointment of a sitting judicial officer as receiver in respect of a dispute relating to the management of the society or temple. Although in the present case, the receiver was appointed on the application of plaintiff to which no objection was filed by the defendant, a judicial officer should not have been appointed and should not have accepted the office of receiver. A judicial officer is not only a Government servant under the administrative control of the High Court, but he also holds a position of status and responsibility which requires him to maintain absolute fairness and impartiality. His conduct both inside and outside the Court should be aboveboard. He is bound by the Conduct rules applicable to Government servants. He, has to discharge greater sense of responsibility in performance of duties. His actions and demeanour should be impeccable. He cannot be permitted to act in positions where his actions may be subjected to scrutiny, contempt or objected to by any of the parties. The nature of duties of receiver as enjoined by Rule 3 requires him to furnish security if any court deem fit. He is required to submit accounts of such periods and in such forms as the Court directs and pay amount due from him as the Court may direct. Rule 3 (d) holds him responsible for any loss occasioned to the property by his wilful default or negligence. These duties can be enforced under Rule 4 by attachment and sale of his personal properties. Apart from the attachment and sale, he can also be held liable for his actions by taking criminal proceedings. Although a Collector has been provided to be appointed as receiver under Rule 5, where a property is land paying revenue to the Government, a Judicial Officer should not submit himself to such unwanted risk of making him subject to scrutiny, criticism, recovery or criminal liability. In case of private disputes allegations may be easily levelled against the receiver. In such cases his conduct in discharge of his duties will become subject matter of scrutiny by an officer of either same rank or of higher or lower rank. In the said event, it will be embarrassing from a brother judicial officer to examine his conduct. It is, therefore, in the interest of justice and fair play that a serving Judicial officer should not be appointed as a receiver by any Court of law. In the present case Dr. Rajesh Singh, Additional Chief Judicial Magistrate (Railway), Mathura was appointed as receiver. This Court takes strong exception and directs that in view of the aforesaid discussions henceforth no serving judicial officer of any rank should be appointed or continued as receiver by any subordinate court, A copy of this order may be given to the Registrar General for communication to all the District Judges in the State.

16. In the present case since this Court has already given opportunity to the counsel for defendant to object to the appointment of the receiver Sri Vineet Narain, no further orders require to be passed in respect of his appointment. The averments in paragraph 27 of the counter-affidavit of Sri Govind Prasad Purohit

shows that on account of theka given to non-Gudhania Brahmins some tension was prevailing and proceeding under Sections 107/116 and 145, 146, Cr. P.C. were initiated. Notices were sent and police report was obtained on 2.8,2002. In the circumstances, the Court does not propose to interfere with the order of appointment of receiver.

17. For the aforesaid reasons, the writ petition is partly allowed. The Civil Judge (Senior Division), Mathura is directed to decide the pending injunction application in Suit No. 332 of 1999 as expeditiously as possible preferably within two months. In deciding application, he will decide whether the plaintiff have any prima facie case and shall also consider the balance of convenience and fact of hardship to any of the parties. He will take into account the findings given by the Courts between the parties in previous litigation and also consider whether any of the parties has a right to manage the temple under the constitution of the Society. There shall be no order as to costs.