

(2013) 08 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34416 of 2012

Jai Gurudev Dharam Pracharak Sanstha Jai Gurudev and
Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 8 ADJ 28 : (2013) 100 ALR 790 : (2013) 6 AWC 6056

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : H.N. Singh and R.K. Ojha, for the Appellant; G.K. Singh, V.K. Singh, Shivam Yadav and Shri Ram Yadav, for the Respondent

Judgement

Pankaj Mithal, J.—This petition had come up before me earlier vide nomination dated 23.7.2012 made by the Chief Justice. It was disposed of after hearing the parties vide judgment and order dated 24.7.2012. The writ petition was disposed of holding the order of the Deputy Registrar of the Firms, Societies and Chits, Agra dated 6.7.2012 impugned in the writ petition to be without jurisdiction and directing the parties to get the dispute regarding the office bearers of the Society adjudicated by the competent Civil Court, but in the meantime, permitting the Executive Committee of the Society and its office bearers, as stood recognised for the year 2011-12 with its Vice President, to hold the post of the President to function till the adjudication of the dispute or any other arrangement is made by the Civil Court.

2. It has been placed before me again on the limited remand made by the Division Bench vide order dated 26.11.2012 passed in Special Appeal No. 137 of 2012 arising from the above referred judgment and order dated 24.7.2012.

3. The appellate Court vide order dated 26.11.2012 agreed with the proposition that the dispute raised in the writ petition was actually referable to Civil Court and to that extent the judgment and order passed in the writ petition suffers from no illegality but as the interim arrangement was made without affording

opportunity to file counter-affidavit to the respondent Nos. 3 and 4, the said arrangement was held to be bad and directions were issued to place the writ petition before the writ Court for making interim arrangement afresh on filing of counter-affidavit and till then status quo was ordered to be maintained.

4. The parties have exchanged counter and rejoinder-affidavits in the writ petition and further affidavits have also been exchanged on an application filed by the petitioners subsequent to the decision of the special appeal.

5. It is important to note that after the writ petition was decided by this Court on 24.7.2012, a Civil Suit No. 595 of 2012 has been instituted on 28.8.2012 on behalf of the Society through its alleged General Secretary Ram Ujagar Singh and the President of the Society for a decree of declaration that Umakant Tiwari be declared as the person authorised for "Namdan" on the basis of announcement of the Baba during his discourse on 16.5.2007 with relief of permanent prohibitory injunction in respect of the properties of the Society.

6. Sri M.D. Singh "Shekhar", Senior Advocate, Sri H.N. Singh learned counsel for the petitioners and Sri V.K. Singh, Senior Advocate assisted by Sri Shivam Yadav, learned counsel for the contesting respondents were heard on the interim arrangement, if any, to be made.

7. The primary submission of the petitioners is that pursuant to the direction of the Division Bench, this Court is obliged to make interim arrangement so that the office of the President of the Society is not usurped and its properties which are public properties are protected. Respondent No. 4, Pankaj Kumar Yadav is a complete stranger to the Society. He was not the member of the general body of the Society or its executive. He has not even filed any suit for getting his rights declared as successor of the Baba or as the President of the Society. He, therefore, has no right to administer the Society or its properties.

8. On the other hand, Sri V.K. Singh has argued that the writ petition has already been disposed of and the order deciding the writ petition has not been set aside. Therefore, no interim arrangement in a decided writ petition can be made notwithstanding the direction of the Division Bench which is in the nature of obiter dicta. The persons who have filed the writ petition are no longer office bearers of the Society entitle to espouse its cause and, therefore, it does not survive at all to permit the Court to make any interim arrangement. The interim protection or arrangement, if at all necessary, can be made by the Civil Court before whom the suit is pending and that with the passage of time their remains no urgency or necessity to grant any kind of interim protection to the petitioners as during all this period the respondent No. 4 who had been managing the affairs of the Society is not said to have misused his office or misappropriated the properties of the Society.

9. In view of the rival submissions made on behalf of the contesting parties, besides the ancillary issues, broadly the following points arise for consideration:

1. Whether the writ Court is obliged to make interim arrangement in a decided petition simply for the reason that a direction to that effect has been issued by a Division Bench?

2. Whether any interim arrangement on the facts and circumstances of the case is warranted at this juncture when the civil suit between the parties is already pending?

10. In attempting to answer the above questions, I consider it appropriate to recapitulate the factual matrix leading to the filing of this petition.

11. Baba Jai Gurudev, Founder Lifetime President of the Society, Jai Gurudev Dharam Pracharak Sanstha expired on 18.5.2012. His departure from this world led to a dispute of the post of President of the Society. The bye laws of the Society provides that the next President of the Society would be a person who is nominated by the Baba himself during his life time for the purposes of "Namdan".

12. On the death of the Baba one group of his disciples led by Ram Ujagar Singh, Vikram Prasad Mishra and Chatar Singh separately approached the Registrar/ Deputy Registrar of the Firms, Societies and Chits, Agra for approval of the list of Members of the Executive Body of the Society for the year 2012-13. Vikram Prasad Mishra specifically contended that the Baba during his discourse on 16.5.2007 at Basirat Ganj Ashram, Unnao had disclosed the name of one Umakant Tiwari for "Namdan", therefore, he alone is entitle to be the President of the Society. The name of Umakant Tiwari as the President of the Society was supported on the basis of resolution alleged to have been passed in the meeting dated 24.5.2012 held in village Mirzapur, Indore.

13. On the other hand, the rival group headed by Ram Krishna Yadav, the Secretary of one of the Trusts founded by the Baba submitted a different list of the members of the executive body of the society for the year 2012-13 for recognition. It was claimed that the Baba had nominated Pankaj Kumar Yadav as his successor and in turn the President of the Society. In support reliance was placed upon the disclosure made by Baba on 17.8.2007 in favour of Pankaj Kumar Yadav and his affidavit dated 27.6.2011 filed in a suit in connection with one of the trusts. The last rites of the Baba were said to have been performed by Pankaj Kumar Yadav and, therefore, also it was alleged that he is the true successor of the Baba.

14. The dispute as to who has been actually authorised under the bye laws by the Baba in his lifetime for the purposes of "Namdan" and in turn to be the President of the Society being dependent upon the evidence to be adduced by the parties, was left open to be decided in a civil suit. The said dispute was relegated for decision of the Civil Court on a suit to be instituted by either of the parties instead of even referring the matter to be decided in a summary manner u/s 25 of the Societies Registration Act, 1860 holding the order passed by the Deputy Registrar of the Firms, Societies and Chits, Agra to be without jurisdiction as neither of the lists submitted for recognition u/s 4 of the Act was counter

signed by the old members and the procedure prescribed for their finalisation was not followed.

15. It is in disposing of the writ petition as aforesaid that this Court by way of an interim arrangement in the best interest of the society permitted the team of office bearers as it existed before the death of the Baba to function and manage the affairs of the Society by promoting the Vice President to the post of the President till the dispute is decided or alternative arrangement is made by the Civil Court.

16. The Division Bench has simply directed that the arrangement made by the writ Court shall not be treated as final and that the writ Court should hear the parties afresh for deciding about the interim arrangement after parties have exchanged their affidavits. The order disposing of the writ petition and reference of the dispute to Civil Court was not disturbed. In view of the order of the Division Bench it is sufficiently clear that as on date, the writ petition stands disposed of with liberty to the parties to get the dispute of successor of the Baba and consequently the office bearers of the Society decided by the Civil Court.

17. In this background, the first and the foremost point which crops up is whether any interim arrangement is legally possible to be made in a decided writ petition.

18. Law Courts are constituted to administer justice and, therefore, must be deemed to possess all such powers as may be necessary to do full justice. It is a well recognised principle that if jurisdiction is conferred by a Statute upon a Court, the conferment of jurisdiction implies the conferment of the power to do all acts or to employ all means, as are necessary for doing justice and preservation of the subject of the litigation so that the final order that may be passed may not be a barren success. Therefore, the Courts of justice have plenary power to grant interim relief in aid of and as ancillary to the main relief available on final determination of rights of the parties.

19. The word "Interim" means for an intervening time. The aforesaid common parlance meaning of "interim" was approved in *Algar v. Middlesex County Council*, (1945) 2 All ER 243, by saying that "the word 'interim' means nothing more than for the time being". Therefore, the order of interim nature is temporary or provisional which operates for the time being or for intervening period between two stages of the litigation commencing from its institution and ending with its final decision.

20. The purpose of granting interim relief is to evolve a workable formula or arrangement as the situation demand by striking a delicate balance between the conflicting interest keeping in mind the good, bad and weak points of the parties. The grant of interim order is more of an equitable nature at the discretion of the Court depending upon the settled principles of prima facie case, irreparable injury, balance of convenience and lots of other special factors such as prejudice likely to be caused to the parties, the larger public interest, delay, laches, clean

hands etc. to meet the ends of justice.

21. In view of the above, every Court has inherent jurisdiction to grant interim order or to make some interim arrangement for the preservation of the property or the subject-matter of litigation during the pendency of the lis or in the interval between the institution and the final decision of the litigation.

22. The question, however, is whether the Court is competent to grant interim relief when the lis has been decided or the Court has declined to decide it by relegating the parties to an alternative forum.

23. The answer to it is clearly available in The Constitution Bench decision of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, wherein their Lordships held that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in proceedings, pending such determination but where the Court declines to determine such rights and requires the matter to be investigated by the Civil Court, it is not competent to issue directions of temporary injunctions in exercise of powers under Article 226 of the Constitution of India.

24. Their Lordships of the Supreme Court referring to the question arising before them for consideration observed and ruled as under:

The question which we have to determine is whether directions in the nature of interim relief only could be granted under article 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued. In our opinion, article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and in our opinion that is not within the scope of article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there "was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under article 226 of the Constitution. In our opinion, the language of article 226 does not permit such an action.

25. The aforesaid proposition has been referred to and followed by the Apex Court in *Amarsarjit Singh Vs. The State of Punjab*, *State of Orissa Vs. Ram*

Chandra Dev and Mohan Prasad Singh Deo, and many others but I have not come across any other Constitution Bench decision contrary to the view taken above.

26. The interim relief granted during the pendency of the petition or suit may in given circumstances be continued even after the disposal of the matter finally to enable the parties to approach the higher forum/Court but such a power is not available to the Courts when the petition is disposed of without going into the merits of the dispute to avail the alternative remedy. Therefore, where the Supreme Court/High Court refuses to entertain the petition or is of the opinion that the petitioner should approach an appropriate forum or Civil Court in respect of the reliefs claimed, the Court cannot grant or continue the interim relief, if any, which may have been granted earlier in the petition, to enable the petitioners to get appropriate relief elsewhere.

27. The above situation is also distinguishable from cases where the petitions are disposed of without adjudicating the merits of the dispute with direction to approach the alternative forum within a particular time irrespective of the time of approaching the forum having expired or with a direction condoning the delay or direction to the said forum to decide the matter expeditiously on merits ignoring technicalities. In such situation, the view of the Supreme Court is that if such directions are issued they need not be necessarily interfered with by the higher forum.

28. In short, what the Constitution Bench referred to above says is that where the Court declines to decide the rights of the parties under Article 226 of the Constitution of India and hold that they shall be tried by the Civil Court or any other forum, the Court cannot issue directions of interim nature.

29. In the instant case, the petition under Article 226 of the Constitution of India was disposed of with the observation that the dispute of office bearers of the Society is one of fact to be decided on evidence and therefore Civil Court is a more appropriate authority for the purpose and the parties should institute a suit in respect of their rights.

30. Today, the writ petition stands disposed of and the said order is final. Therefore, in view of the ratio of the Constitution Bench of the Supreme Court in Madan Gopal Rungta (*supra*) this Court is not competent to make any interim arrangement.

31. The Court after passing the final order becomes functus officio and is left with no power to deal with the lis involved in any manner except by way of review or correction or recall of the same on the grounds permitted. The Court having performed the task entrusted ceases to have any authority over the matter. Therefore, also this Court in the present has no jurisdiction to make any interim arrangement at this stage.

32. This takes me to the next leg of the controversy as to the impact of the

directions of the Division Bench to rehear the parties on interim arrangement.

33. It is settled that the Court exercises only those powers as are vested in it by Law/Statute and not otherwise. A jurisdiction which is not otherwise available, cannot be conferred presumed or assumed. Therefore, there can be no question of clothing the writ Court with the power of making an interim arrangement in a decided matter which power is otherwise not available in law to the writ Court.

34. The power of the writ Court under Article 226/227 of the Constitution of India is designed to effectuate the law and to enforce the rule of law rather than to act contrary to it. Any exercise of power so as to make interim arrangement when the writ petition stands decided would be contrary to the mandate of the Constitution Bench decision in the case of Madan Gopal Rungta (Supra).

35. Sri H.N. Singh on the basis of decision in the case of Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, , has emphasised that as the matter involves public property interest of justice warrants that the property be protected.

36. In the above case the ratio laid down is that the public interest is one of the material and relevant consideration for exercising or refusing interim injunction.

37. As referred to earlier, grant of interim injunction, apart from settled principles of prima facie case, irreparable loss and balance of convenience, is dependent on host of other factors and public interest or and protection of public property is one of the material and relevant considerations but where the Court is denuded of the power to grant interim injunction such factors would be of no use and would not compel the Court to pass any interim order as exercise of such power would be without jurisdiction.

38. Similarly, the decisions in R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, and Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, , are of no assistance to the petitioners as they simply lay down that the properties belonging to religious trusts or institutions ought not be sold ordinarily by private negotiations but by public auction as far as possible.

39. On the basis of the above authorities, it is being canvassed that the Committee of Management of the Society in power is likely to dispose of the properties of the religious institution which may cause damage to public at large.

40. First of all, there is no such specific pleading. There is no material on record to establish that during the past one year of the pendency of this litigation any such exercise was undertaken by any person connected with the management of the society. Secondly, this is a matter which has to be dealt with, if necessary, by the Civil Court who is competent enough to pass interim orders of the nature protecting the religious and public properties. Any exercise of such power by this Court in a decided petition would amount to usurpation of powers of the Civil Court when the parties have already instituted a suit. No special case for exercise

of any extra ordinary jurisdiction when the Court below is ceased with the lis between the parties has been made out to warrant making of any interim arrangement in the present case.

41. It is worth remembering well recognised principle that Article 226 of the Constitution of India cannot be used for the purposes of securing interim relief only.

42. In view of the aforesaid facts and circumstances and the legal position narrated above, I need not strain myself in going into certain ancillary points raised at the Bar as the above aspects are sufficient to dispose of the matter regarding the interim arrangement.

43. Accordingly, it is not a fit case where any interim order at this stage is necessary to be passed by this Court. The matter of making interim arrangement is also left open to be considered and decided, if necessary, by the Court below before whom the suit is pending upon appropriate application of either of the parties. The petition is directed to be consigned to record.