

(2003) 09 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 2341 of 2002

Janardan Prasad Nag

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Citation : (2003) 4 JCR 180

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Ajit Kumar, R.C. Khatri, V. Shivnath, Vimal Kumar and K.M. Verma, for the Appellant; Anil Kumar Sinha, AG, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The Public Interest Litigation was referred by the petitioner for issuance of an appropriate writ(s)/order(s)/direction(s), in the nature of mandamus, as the case may be, against the respondents who are making constructions in the area know as Shiv Mandir/ Mahabir Mandir situated within the campus of Jharkhand High Court.

2. According to the petitioner, the Shiv Mandir/Mahabir Mandir, in question, now situated within the campus of Jharkhand High Court for more than fifty years and the people of the locality male/ female come to worship the deities placed inside the Mandir premises.

3. The grievance of the petitioner is that respondents have started illegal construction in the Mandir area of about 123" x 70 ", disturbing the day-to-day worship by the local people who used to perform; Mahashivratri; Holi Festival; Ram Navmi; Krishna Janmastami; Shrawan Purnima; Akhand Kirtan; Dashhara etc. It is also alleged that the Gate of the Mandir in the southern portion has been closed whimsically by the respondents without considering the difficulties of public, in general, who come for the purpose of "Worship" in the Mandir, causing difficulties, affecting their right of worship at the place where they were performing Puja for more than fifty years,

4. From the enclosures filed by the petitioner, it appears that the respondents earlier took steps to demolish the Mandir, in question.

5. One Mahesh Prasad Gupta moved before the Supreme Court in Writ Petition (Civil) No. 318 of 2002--Mahesh Prasad Gupta v. Registrar General, Jharkhand High Court and Ors.. A Bench of the Supreme Court by order dated 9th July, 2002 while dismissed the writ petition, observed as follows :

"We find no illegality In the respondents taking steps to demolish the Mandir if it is constructed unauthorisedly and without building plans being passed.

We see no justification whatsoever for the High Court at Ranchi to have given any permission with regard to the construction of any wall or with regard to the diversion of drain etc., referred to in the letter dated 1st February, 1993. Usurpation of public property in the name of religion and construction of religious places without permission from the Municipal Corporation cannot be permitted. The modus operandi of grabbing public land and erecting buildings illegally primarily for the benefit of the perpetuator has to come down with a heavy hand. We see no merit in this petition and the same is, accordingly, dismissed.

We expect all the State Governments to take appropriate action in preventing such encroachments and Illegalities wherever they come up. Copy of the order be sent to all the Chief Secretaries."

6. Counsel for the petitioner was initially asked to approach the Chief Justice of Jharkhand High Court, in its administrative side, to settle the issue.

It is informed that on the direction of the Chief Justice, a separate gate has been opened in the southern side for entrance of the public, in general, to worship the deities within the Mandir. No step has been taken by the Jharkhand High Court to disturb the public from worshiping the deities nor any step has been taken to demolish the structure.

The State of Jharkhand in its affidavit has taken plea that the land is Keshar-E-Hind as recorded in the revisional survey record under the custody of the Jharkhand High Court. A Shiv Mandir/Mahabir Mandir is existing since long in Plot No. 249 measuring an area of 1600 sft. (40" x 40" approximately). Recently, a boundary wall has been constructed in its three sides (East, West & North). In the southern boundary, a gate has been opened for entry of the public within the Mandir premises with the consent of the High Court. It is for the Chief Justice of the High Court to decide whether it will continue at the same place or not.

7. The learned Advocate General submitted that the Chief Justice being the custodian-of High Court, is all in all, to decide whether it will remain at the same place or it can be shifted to some other place.

8. In view of the observations of the Supreme Court, as quoted in the preceding paragraph (para 5), it is not desirable for this Court to give any finding with regard to Mandir, in question. The Chief Justice being the custodian of the

Jharkhand High Court, it is for the Chief Justice to decide as to how one or other part of land of the High Court can be utilized in a better manner and any building/structure situated inside the High Court premises to be renovated or demolished.

9. So far as the construction of a new building adjacent to Mandir is concerned, it appears that a building has been constructed in view of the commitment made by the then Chief Justice of Jharkhand High Court to the Advocates' Association, Jharkhand High Court, Ranchi. In view of the help rendered by the Members of the Jharkhand High Court Advocates' Association for construction of the building, in question, the present Chief Justice of Jharkhand High Court, being the custodian, has permitted the members of the said Association to use the building without any right or title or to alter the structure without prior permission in writing of the Chief Justice. A letter for use of the building by the Members of the Advocates' Association has been issued by the Registrar General, Jharkhand High Court, Ranchi on 20th August, 2003, which reads as follows :

"From :

Ibrar Hassan

Registrar General,

High Court of Jharkhand, Ranchi.

No. 253/R.G. Dated 20th August, 2003

To,

The President,

"Advocates" Association,

Jharkhand High Court, Ranchi.

Sir,

I am directed to inform you that in view of the commitment made by the then Hon'ble the Chief Justice and the help rendered by the Members of the High Court Advocates* Association to the High Court for constructing the building having various Chambers, Hon'ble the Chief Justice has been pleased to permit the High Court Advocates' Association to use the building for a period of "20" (Twenty) years. The Association will be free to allot the different Chambers to its Members at its discretion. The Association would not be entitled to permit its Members to put the building to any use other than using it as lawyers' Chambers or to permit anyone other than a Member of the Association to use it for any purpose whatsoever. Hon'ble the Chief Justice has been pleased to make it clear that the title to the building will remain with the High Court and the Association and Its allottee Members will have no right to alter the structure without the prior permission, in writing, of Hon'ble the Chief Justice.

The expenses for maintaining the chambers and the water and electricity charges

will be borne by the Association so long as the permission given to it for use of the building subsists.

Yours Faithfully, Sd/- Ibrar Hassan 20.8.03 Registrar General."

10. It has been brought to the notice of the Court that the Ranchi Regional Development Authority, Ranchi (R.R.D.A. for short) have sanctioned the plan and the building, in question. The Administrator, Ranchi Municipal Corporation, Ranchi has taken plea that the land, in question, belongs to the State Government, under the custody of the Jharkhand High Court. As such, the Ranchi Municipal Corporation has no objection for legal use of the land, in question, in any manner, if the High Court and the State Government have decided it.

11. In the counter affidavit filed by the President, Advocates' Association, a list has been enclosed, showing the names of the Lawyers who have donated for different types of chambers, which are given hereunder :

Type "A" Donation - Rs. 75,000/-, excepting Sl. Nos. 27 and 28 who have donated Rs. 55,000/-

Sl. No. Name Sl. No. Name

1. A.K. Kashyap 2. A.K. Sahani

3. A.N. Deo 4. Amrendra Kumar

5. T.R. Bajaj 5. Anubha Rawat

7. Dr. S.K. Verma 8. G.C. Jha

9. Ganesh Pd. Singh 10. Gautam Rakesh

11. H.K. Sikarwar 12. K.N. Prasad

13. K.P. Deo 14. Manish Mishra

15. N.C. Garg 16. Maresh Prasad Singh

17. Nirmal Katariya 18. P.K. Mukhopadhyaya

19. Pandey Neeraj Rai 20. Prabhash Kumar

21. Prasant Kumar 22. Pratyush Kumar

23. Praveen Akhouri 24. Praveen Jaiswal

25. R.K. Choudhary 26. Raj Kumar Pd.

27. Rajesh Kumar 28. Rajiv Kumar

29. Rakesh Kumar Samrendra 30. Rakesh Kumar Verma

31. Ram Nivas Roy 32. S.D. Sanjay

33. S.N. Das 34. Salbal Mitra

35. Sanjay Piparwar 36. Satendra Singh

37. Satish Bakshi 38. Sunil Kumar

39. Y.N. Mishra

Type "B" Donation ? Rs. 65,001/-

1. B.N. Roy 2. Maurya Vijay Chandra

3. N.K. Ram 4. Nlranjan Singh

5. Nutan Mishra 6. Ram Awadh Pd. Gupta

7. Ratnakar Bhengra 8. Rita Kumari

9. Usha Singh 10. Uttam Anand

Type "C" Donation ? Rs. 73,002/-, excepting Sl. Nos. 9 and 24 who have donated Rs. 53,668/- and 34,334/-

1. A.K. Kanth 2. Anil Choudhary

3. Avinash Kumar Singh. 4. B.N. Dey

5. Binod Kr. Jha 6. D.N. Bharti

7. Harendra Kumar Singh 8. K.M. Lal

9. Lalan Kr. Roy 10. Manish Kr. Jha

11. ManoJ Priyadarshi 12. N.K. Chatterjee

13. Nilendu Kumar 14. P.K. Agrawal

15. Pitwash Pradhan 16. R.S. Modi

17. Rajiv Ranjan Prasad 18. Rajesh Kr. Singh

19. S.L. Barnwal 20. Salendra Jit

21. Shekhar Pd. Sinha 22. Shekhar Sinha

23. Umesh Pd. Singh 24. Manoj Kumar Mishra

Type "D" Donation ? Rs. 1,25,001/-, excepting Sl. Nos. 7 who has donated Rs. 88,334/-

1. A. Allam 2. A.K. Chaturvedi

3. Ajit Kumar 4. Anil Kr. Sinha

5. Dilip Jerath 6. M.S. Mittai

7. R.S. Mazumdar 8. Rajendra Krishna

9. V.P. Singh

Type "E" Donation ? Rs. 1,11,000/-

1. A.K. Mehta 2. Arbind Kr. Singh
3. Binod Poddar 4. H.K. Mehta
5. Jai Prakash 6. Laljee Sahay
7. M.M. Banerjee 8. M.S. Anwar
9. Mahesh Tiwari 10. N.N. Sinha
11. Navin Knmar 12. P.C. Tripathy
13. P.K. Sahay 14. P.P.N. Roy
15. Rajesh Kumar 16. Ram Kishor Prasad
17. Ramlakhan Singh 18. Ritu Kumar
19. S.B. Garodia 20. Sanjay Kumar

Type "F" Donation ? Rs. 1,00,002/-, excepting Sl. No. 5 who has donated Rs. 71,668/-

1. Nilesh Kumar 2. P.K. Prasad
3. Prashant Singh 4. R.S.P. Sinha
5. Shailesh Singh

12. Mr. V. Shivnath, the President of the Advocates' Association submitted that the Association has taken decision to allot the Chambers to the donorg. A lottery for such allotment of Chambers to the donors has also been drawn.

13. In view of the stand taken by the parties, taking into consideration the permission to use the building has been granted by the Chief Justice, Jharkhand High Court, the State of Jharkhand has no objection for use of building by Lawyers, the Ranchi Municipal Corporation has not made any objection and the plan of the building has been passed by the R.R.D.A., we find no ground made out to restrain the respondents from making the construction over the area, in question, as prayed for by the petitioner, nor any ground made out to interfere with the decision taken by the Chief Justice, Jharkhand High Court allowing the Advocates' Association to use the building for its members.

14. However, in public interest, the Advocates' Association including the members whoever may be allotted to use the building are directed not to violate any terms and conditions, as stipulated by the Chief Justice of Jharkhand High Court and communicated by the Registrar General, Jharkhand High Court, Ranchi vide letter dated 20th August, 2003 as quoted above.

15. Whether the period of twenty years should be subsequently extended or not, such question will arise at the time of completion of twenty year's period, as

stipulated in letter dated 20th August, 2003, which can be determined by the Chief Justice, Jharkhand High Court at appropriate time.

16. The writ petition stands disposed of with the aforesaid observations and directions.

Lakshman Uraon, J.

17. I agree.