

(2019) 02 MP CK 0092

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 11270 Of 2012, 18902 Of 2014, 5315 Of 2015,
3456 Of 2016, 21887 Of 2018

Kishori Lal Bhalavi

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Citation : (2019) 02 MP CK 0092

Hon'ble Judges : R.S. Jha, J;Sanjay Dwivedi, J

Bench : Division Bench

Advocate : Zaki Ahmad, Bal Kishan Choudhary, Ajay Gupta, Mainsh Verma,
Anshuman Singh, K.N. Pethia, J.K. Jain, Sanjay Seth, A. Rajeshwar Rao, Jubin
Prasad

Judgement

The learned counsel appearing for the Municipal Corporation has also filed an action taken report.

The learned Assistant Solicitor General appearing for the Gun Carriage Factory, Ordnance Factory as well as the Defence Estate Officer, prays for and is granted permission to file a response on behalf of the Gun Carriage Factory and the Ordnance Factory during the course of the day after supplying a copy of the same to the learned counsel for the petitioner.

The learned Government Advocate appearing for the State submits that pursuant to the orders passed by this Court, they are undertaking demarcation and survey of the entire area and would also be filing a report in that regard within a week. It is submitted that during the said period they shall also file reports regarding demarcation and survey of constructions made by R.N. Education Society, Sainik Society and Mahakaushal Janhit Sanstha Grih Nirman Society, Badanpur.

The learned Government Advocate appearing for the State further submits that the authorities are also taking up steps on war-footing as undertaken by them on 13.02.2019 for removal of religious structures as well including the construction

made at Madan Mahal Dargah. He further submits that they have taken up regular drive to remove encroachments and have demolished further 138 encroachments during the intervening period.

The learned Government Advocate prays for and is granted a week's time to file a progress report.

The learned counsel appearing for the Municipal Corporation as well as State have jointly submitted that pursuant to the order passed by this Court in W.P. No.2999/2019 filed by Hazi Mohammad Iqbal, President, Waqf Kabristan Usmania, Supatal, Jabalpur, the said petitioner had filed a reply before the Corporation to the show-cause notice issued by the Corporation on 20.02.2019 which has been duly considered by the Corporation. It is submitted that the Corporation has passed an order on 23.02.2019 and while the issue regarding ownership of the land and the extent of the land belonging to the Supatal Kabristan has been deferred awaiting consultation with the State, the objection regarding the petitioner in respect of the steps for demolishing the constructions undertaken by them has been rejected and dismissed as the construction has been made in a no construction zone and as the construction raised is not a commercial construction as contended by the Supatal Kabristan. It is submitted that pursuant to the decision taken by them on 23.02.2019 to the aforesaid effect, copy of which has been filed alongwith the report as document No.2, the Committee constituted by this Court is taking emergent and urgent steps to remove the illegal construction made by the Supatal Kabristan.

Having heard the learned counsel for the State and the Corporation on this issue, we do not find any illegality or perversity in the order passed by the Corporation dated 23.02.2019 and, therefore, while the reference to the State regarding ownership and area of the Kabristan is not interfered with, the order regarding illegal and unauthorised construction made by the Kabristan, passed after giving due notice and opportunity, is hereby affirmed and upheld. The respondents are accordingly granted liberty to take immediate steps, as taken in the case of others, to remove the unauthorised construction and submit a report.

The learned counsel Government Advocate appearing for the State as well the learned counsel appearing for the Corporation conjointly submits that they are taking and shall take emergent steps and shall continue to do so for removing all these unauthorized and illegal construction as well as removing further encroachment and they shall file not just the action taken report but also survey report undertaken by them in respect of the institutions named above specifically the R.N. Education Society, Sainik Society, Mahakaushal Janhit Sanstha Grih Nirman Society, Badanpur, and the other constructions made in the area including the extra, additional or unauthorized constructions made around Pisanhari Ki Madia.

The learned counsel appearing for the respondent No.9/Parshva Digambar Jain Pisanhari Ki Madia also prays for and is granted a week's time to file its response.

The learned counsel appearing for the respondent No.10 also undertakes to file an additional reply as well as an affidavit in response to the submissions made by the petitioner regarding illegal construction undertaken by them during the pendency of the petition and the illegal destruction of the Madan Mahal rocks and the excavation undertaken by them for that purposes.

In view of the aforesaid while a week's time is granted to the authorities as prayed for the aforesaid purposes, the learned Assistant Solicitor General appearing for the Union of India is directed to ensure that the Officers of the Gun Carriage Factory, Ordnance Factory as well as the Defence Estate Officer who have been made Members of the Committee constituted by this Court, shall get in touch with the Commissioner, Revenue Division, who is the Head of the Committee for the purposes of drawing of a further plan for conservation and preservation of the area as well as in respect of the development and protection of the site from where the dinosaur's skeleton and nest are located.

The learned counsel for the Corporation on the previous occasion had stated that they are undertaking simultaneous exercise of fencing and preserving the area and have handed over the project of afforestation and rehabilitation for the same to the State Forest Research Institute.

The learned Government Advocate appearing for the State is directed to submit a report regarding the urgent steps that the State Forest Research Institute are proposing to take for that purpose.

The State and the Corporation are also directed to file reports in respect of further survey proceedings undertaken by them in respect of not just this area but the other areas which are encompassed in the petition and has been mentioned by us in the previous orders as well.

We hope, trust and repose full faith in not just the institutions, religious and otherwise as well as the officers and the other institutions involved in voluntarily coming up with positive solutions and contributions and undertake positive steps on their own or conjointly for the purposes of ensuring that the object and purpose of the petition and the preservation of the area is undertaken by their voluntary contributions.

List these petitions immediately after a week.