
(1978) 02 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 705 of 1975

Madan Mohan Maharaj	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 23-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 32, 363

Citation : AIR 1978 Raj 112 : (1978) RLW 153 : (1978) 11 WLN 66

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : M.M. Tiwari, for the Appellant; S.B. Mathur, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.L. Jain, J.—The facts of this writ petition are that upon the merger of the erstwhile Jadon State of Karauli, private properties settlement took place between the ex-Ruler on the one hand and the Government of India and the State of Rajasthan on the other. The Kailadevi temple was included in the Inventory of private properties at item No. 20 with the decision of the Home Ministry that "the temple will be managed as a trust, His Highness will be the sole trustee." The Government of India impressed upon the Ruler to execute a trust deed and after prolonged deliberations the Ruler of Karauli executed a trust deed on 21st December 1961 and had it registered. Along with the trust-deed he attached two lists of properties, one of the ornaments and other movable properties, and the other comprised the immovable properties of Kailadevi Trust. Along with the trust deed the Ruler attached a ferro-typed map of the immovable properties showing the boundaries of the trust premises. This trust deed along with the aforesaid lists of the properties and the ferro-typed map were sent to the Government of Rajasthan in the General Administration Department. A copy of these documents was also forwarded by the General Administration Department to the Revenue Department. It appears that no objection was taken

to the ferro-typed map and the immovable properties included in the trust-deed in the aforesaid manner. The list shows 29 shops (at item No. 26) 26 shops (at item No. 32) and 531 Chabutaras (at item No. 33) which are the subject matter of this petition.

2. A controversy at first had arisen regarding the realisation of the rent of the shops from the shopkeepers who had been paying rent to the trust at the time of the fair. The Panchayat of Loharra claimed that the shops were the properties of the Panchayat and they were entitled to realise the rent. The Government of Rajasthan wrote to the Collector, Sawai Madhopur and the Panchayat Department to the effect that the Panchayat cannot recover any rent from the shops which belong to the said templa which is a trust property and the Panchayat shall not interfere in the management of the said temple in future, The letter of the Government is dated 29th September, 1961 (Annexure "G"). However, the Sub-divisional Officer Karauli wrote a letter (Annexure) 1) to the Tehsildar that the Additional Collector, Sawai Madhopur had rang him up on, 26th March, 1975, to say that the shops were being leased out by the Kailadevi Trust in an unauthorised manner for the last so many years as these shops stood on Government land. The Sub-divisional Officer, Karauli, directed the Tehsildar to prepare a map of the Mela grounds and auction the shops. The Tehsildar forwarded a copy of the S. D. O.'s letter to the Trust informing that the shops shall be auctioned in future by the Tehsil and first such auction shall be held on 1st, 2nd and 3rd of April, 1975. He also asked them to furnish all the previous record in this connection. Aggrieved by this development, the petitioner, namely, Maharaj Ganeshpal, ex-Ruler of Karauli and his sons have filed the present writ petition praying that the letter of the Sub-divisional Officer be quashed and the respondents be restrained from auctioning the said shops and Chabutaras.

3. The contention of the State Government is that Kailadevi temple was constructed in the 12th Century A. D. by one Shriya Jaga resident of village Livali, Tehsil Bamanbas, District Sawai Madhopur. The temple was constructed by Gusains, whose descendants are still the worshippers of the temple. The State of Karauli raised a dispute in the matter of income derived from the temple. The dispute was settled by the Political Department of the Government of India long back as is evident from the Administration Report of the Karauli State for the Samvat year 1966. According to this settlement the State of Karauli got the right to the income derived during the fair. The income derived from the offerings during the fair was kept apart. The income during the rest of the year went to the priests. The State maintained an account of the expenditure incurred by it for the development of the shrine and the facilities for the pilgrims during the fair. The State had the control over the income and expenditure of the temple. After the merger of the State, the State of Rajasthan maintains the roads, medical and other amenities including law and order provided by the former State of Karauli. The idol of Kailadevi was brought in Samvat 1191 by one Bengali Baba Kedar Giri who took Samadhi. Kailadevi had never been the family deity of the petitioner, but was the goddess of the public at large. Rajendra Giri one of the priests filed a

civil suit in the court of the Additional District Judge Gangapur City in 1974 against Maharaj Kumar Brijendra Pal and others in which suit the right of receiving the offerings and the right of worship is in dispute. One Kailash Giri submitted an application for the registration of the Trust as a public trust under the Rajasthan Public Trusts Act, 1959. The Assistant Devasthan Commissioner has directed that it should be so registered. The Revenue Settlement in the former State of Karauli was conducted in Samvat year 1966 in which the lands on which the disputed shops and Chabutaras stand are shown 35 "Abadi Gair Mumkin" vide Ex. R. 12. In Samvat year 2015 when the current settlement was held, the land in dispute was allotted Khasra Nos. 2844, 2846, 2850, 2856, 2859 to 2865, 2868 and 2583 and was recorded as Gair Mumkin Abadi etc. Khalsa Siwai chak Bila Lagani showing thereby that it belonged to the State of Rajasthan. It was alleged that the petitioner is neither the owner nor has he any right in any property belonging to the Kailadevi temple. The shop sites and Chabutaras are the properties of the State and they are in possession of the State. The income realised from these shops was credited in the State account and not in the personal account of the Maharaja, It was, therefore, prayed by the State Government that the petition should be dismissed.

4. I have heard the arguments and perused the record. Before deciding the matter in controversy in question, I have to deal with some preliminary matters. One Rajendra Giri has made an application that he should be added as a party to these proceedings. The State of Rajasthan has also applied that Ram Giri and Rajendra Giri be added as parties. Upon a consideration of the matter, I find that Gusains are concerned not with the earnings of the shops and Chabutaras but only with the offerings which are not here the subject matter of dispute. These applications are therefore rejected.

5. The next objection is with regard to Article 363 of the Constitution. This article provides that no court shall have jurisdiction (1) in any dispute arising out of any provisions of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Government was a party and which has or has been continued in operation after such commencement or (2) in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to such treaty, agreement, covenant, engagement, sanad or similar instrument. The learned Deputy Government Advocate urged that Article 363 presents a complete bar to the writ petition. The contention appears to be that the covenant being an agreement between high contracting parties, no municipal court can decide any dispute in respect of such covenant. I have given my anxious consideration to this matter and it appears to me that the matter does not relate to any provision of the covenant or to any constitutional provision relating to covenant. The matter relates to the trust created in pursuance of a private property settlement. Moreover, a dispute in order to shut out the jurisdiction of this court, must be a

real and bona fide dispute and not an illusory one as was held in *The State of Rajasthan and Another Vs. Sawai Tejsinghji Maharaja of Alwar*, As the facts will soon show, the dispute raised by the State is not a real dispute. I am, therefore, of the view that Article 363 cannot be invoked to oust the jurisdiction of this Court in respect of the matter in hand.

6. The learned Deputy Government Advocate then submitted that a question of title to the disputed properties cannot be decided by the correspondence (produced by the petitioner) which passed on between the ex-Ruler and the Government nor can such a complicated issue of title be decided in the writ petition by means of affidavits and the Civil Suit was the only remedy available to the petitioners because facts and question of title required to be investigated. As a matter of fact a suit is already pending as stated in the court of Additional District Judge, Gangapur City. Reliance was placed on *D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others*, wherein it was observed that where basic facts are disputed and complicated questions of law and fact depending on evidence are involved, the writ court is not the proper forum for seeking relief. The right course for the High Court in proceedings under Article 226 is to dismiss the petition on this preliminary ground without entering upon merits of the case. I have considered over this objection and it also appears to me quite untenable. The factual foundation is quite clear and no complicated facts are required to be examined in this case. The civil suit which is already pending has no concern with the Chabutaras and the shops in question. Moreover, a civil suit in a case like this cannot furnish an adequate, efficacious and beneficial remedy. I, therefore, reject this objection as well.

7. Now, from the administration report of samvat 1985 of the Jadon State of Karauli which was placed before me by the State clearly shows that the income derived from the offerings whether in cash or kind during the fair held each year from Chaitra Badi 12 to Chaitra Sudi 12 was set apart and spent on works connected with the shrine. That the shops and the Chabutaras were constructed out of this fund is amply borne out by the Administration report of samvat year 1990, pp, 23-24, para 13 which mentions that eleven new shops and eleven Chabutaras were added in Kailadevi market and police station was constructed and Dharamshala was repaired at a cost of Rs. 3,286 and odd out of the Kailadevi fund. That clearly shows that even if the land in question were recorded as Sivai Chak. the Chabutras and the shops were the property not of the State Government but of the Kailadevi fund. When the Ruler constituted himself as the sole trustee of the temple, he added along with the trust-deed the list of immovable properties shown on the map. For full 15 years since, no objection was taken that these shops and Chabutaras were the property of the State Government. The controversy in fact was raised by the Panchayat in September, 1961, months before the trust deed was executed and it was settled by the State Government in favour of the petitioners. The land record entries made in samvat 2015 no doubt show the lands as Sivai Chak. The petitioners have already moved proper authorities for correction of the entries. In these circumstances, it

appears difficult to follow how suddenly and surprisingly the State Government has reversed its stand and has claimed the Chabutaras and the shops to be the properties of the State Government. As a matter of fact, except the notice Annexure 1 and the written statement, I do not find any document produced by the State Government which can establish that at any time until now, the State Government ever laid its claim to the shops and the Chabutaras. All these shops and the shop sites (Chabutaras) in question are the properties of the trust and therefore, the trustee alone is competent to deal with them in any manner he likes, of course. consistent with law.

8. I, therefore, accept this writ petition. This involves declaration, cancellations of the notice, and future injunction Article 226 empowers the court to mould its relief and it need not confine itself to the historical limitations of the prerogative writs. The scope of certiorari and prohibition is the same but prohibition will not lie unless something remains to be done that a court can prohibit, and certiorari will not lie unless something has been done that a court can quash. In India and America "Mandamus frequently issues to enforce abstention from unlawful conduct", vide Ade Smith, Judicial Review of Administrative Action, 3rd Ed. 1976, page 483, para 2. It can be issued to enforce a duty not to act unlawfully. As the range of interference by courts widens, the dividing lines between the historical writs appear to be disappearing, so much so that in some cases the writ issued was described as certiorarified mandamus. R. N. Kells (1950) 2 Stanford L. Rev. 285. Consequently, I direct as follows:

- (1) The order Annexure 1 of the Sub-divisional Officer dated 26th March, 1975, and of the Tehsildar dated 31st March, 1975, shall be quashed;
- (2) The respondents shall not interfere with the management of the shops and Chabutaras in question undertaken by the Kailadevi trust.
- (3) The auction proceeds so far realised shall be refunded to the petitioners,
- (4) The costs shall be easy,