
(2007) 10 CAL CK 0005
In the Calcutta High Court
Case No : W.A. No. 2341 of 2002

Mandeep Mishra and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 12

Citation : AIR 2009 Cal 31 : (2008) 4 CHN 674

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : D. Sengupta, for the Appellant; A. Sinha and O.P. Jhunjhunwala, for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—Heard the learned Advocates appearing on behalf of the parties.

2. The instant writ petition was filed before this Court sometime in the year 2002 by three persons, who claim to be devotees of Sri Aurobindo and also followers of Sri Aurobindo's Yoga, namely, Integral Yoga.

3. In paragraph 2 of the writ petition, the writ petitioners have stated their long standing association with the philosophy of Sri Aurobindo. The writ petitioners have also stated in the said paragraph that as all of them were the followers of Sri Aurobindo and believed in one path, they were acquainted to each other.

4. In paragraph 3 of the writ petition, it has been stated that the writ petitioners came to know from a telecast in Khas Khabar and DD-1/Dd-7 news of 9th September, 2002 evening, that the learned Chief Judicial Magistrate, Alipore, was pleased to frame charges inter-alia against the trustees of Sri Aurobindo Trust. Gathering certain information thereafter, the writ petitioners filed the instant writ petition making Union of India and Sri Aurobindo Ashram Trust, Pondicherry, as

respondents to the writ proceeding.

5. The following reliefs were prayed for in the writ petition:

(a) Issue a writ of or in the nature of mandamus directing the respondent No. 2, namely all the Trustees of Sri Aurobindo Trust, Pondicherry to quit and vacate the office of Sri Aurobindo Ashram Trust, Pondicherry upon handing over the charge of the said Trust to the persons appointed by this Hon"ble Court till the finality of the criminal case, being No. C2598 of 1999 pending before the Ld. C. J. M., Alipore, W. B.; for preservation of the property of the said Ashram;

(b) Issue a writ of prohibition, prohibiting the existing five Trustees of Sri Aurobindo Ashram Trust, Pondicherry to hold the office till the finality of the criminal case being No. C/2598 of 1999 Pending before the Ld. C. J. M., Alipore, W. B.;

(c) Pass interim orders in term of prayer (b);

(d) Pass orders to appoint the competent persons, as deem fit and proper by this Hon"ble Court, as an interim measure till finality of the criminal case or any other criminal cases, to run the administration and management of the Ashram - in conformity with the aims and object, purpose and present need of the trust;

(e) Pass an interim order directing the trust not to spend any money from the Trust fund exchequer to defend any criminal case against the Trustees and other inmates of the said Ashram Trust, including the present one where charge had been framed;

(f) Pass an inter order directing the trust, after making physical verification of all the valuable goods/manuscripts of Sri. Aurobindo/Books, Journals and other valuable writes in the presence of the persons appointed by this Hon"ble Court, seal the Archive and Research Department and any other Department of the Trust, who are in possession of the evidences, records including the manuscripts of the writing of Sri Aurobindo which forms the basic materials of the present criminal trial, being C-2598 of 1999;

(g) Pass any other order(s). as Your Lord-ship may deem fit and proper in the facts and circumstances of the case.

6. Directions for filing of affidavits were given. It appears that the respondent No. 2, that is to say, Sri Aurobindo Ashram Trust, has filed an affidavit-in-opposition, affirmed on 1st January, 2003, by one, Dilip Kumar Datta. A copy of the said affidavit-in-opposition appears to have been served on the learned Advocate-on-Record of the writ petitioners by a letter of the respondent No. 2, dated 22nd October, 2003. The Acknowledgement Due Card, produced before this Court,, indicates service of the affidavit-in-opposition upon the learned Advocate-on-Record for the writ petitioners. Liberty was also given by this Court to the respondent No. 2 to use a supplementary affidavit for bringing on record before this Court the subsequent developments which go into the genesis of the

matter.

7. From the writ petition it appears that the writ petitioners have sought to invoke the high prerogative Constitutional Writ Jurisdiction of this Court against the respondent No. 2, which is a Public Charitable Trust.

8. From the supplementary affidavit filed by the respondent No. 2, it appears that consequent to the filing of the writ application, the Criminal Case No. C/2598 of 1999 was quashed by this High Court in its Criminal, Revisional Jurisdiction by a judgment and order dated 23rd July, 2004, passed by Pradip Kumar Biswas, J. (as His Lordship then was) in C. R. R. No. 2731 of 2002. It also appears from the said supplementary affidavit that the Hon''ble Supreme Court was thereafter pleased to dismiss the SLP filed by the complainant against the judgment and order dated 23rd July, 2004 passed by this Court. This order of dismissal of the SLP by the Hon''ble Supreme Court, is dated 21st November, 2005, a copy whereof is annexed to the supplementary affidavit.

9. From the above, it appears that the entire basis/genesis on which the writ petition was filed before this Court at the first instance, appears to be non-existent as of today.

10. However, what comes as a surprise, is how the writ petitioners could have approached this Court at the very first instance by filing such a writ petition. Apart from the territorial jurisdiction aspect, which itself is quite doubtful, the writ petitioners, instead of availing the provisions of Section 92 of the Code of Civil Procedure, chose to invoke the high prerogative Constitutional Writ Jurisdiction of this Court by seeking reliefs,, as will appear from the prayers set out here-in-above This Court also takes note of the fact that there was no prayer for issuance of any writ against the respondent No. 1, being the Union of India. The respondent No. 2 is a Public Charitable Trust and cannot be said to be a "State" as defined under Article 12 of the Constitution of India nor an instrumentality of the State. The instant writ petition therefore, could not have been maintainable in the first place as against, respondent No. 2, much less for the purpose of orders as prayed for in the instant writ proceeding.

11. For the foregoing reasons, this Court is of the opinion that the instant writ petition is thoroughly misconceived, not maintainable in law and is devoid of any merit.

12. The writ petition stands dismissed with costs assessed at 300 GMs.

13. Urgent certified copy of this order be supplied to the parties, if applied for, subject to compliance with all requisite formalities.