

(2012) 05 DEL CK 0693

In the Delhi High Court

Case No : Writ Petition (C) No. 515 of 1989

Mange Ram Bhardwaj

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 10, 10(2)

Ancient Monuments Preservation Act, 1904 — Section 13

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2

Citation : (2012) 05 DEL CK 0693

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : R.K. Sinai, Mr. S.P. Pander, Mr. Sitab Ali Chaudhary and Ms. Rashmi Pandey, for the Appellant; B.V. Niren, CGSC with Mr. Utkarsh Sharma and Mr. Prasouk Jain, for the Respondent

Judgement

Sunil Gaur

1. Eviction of the petitioner from land within Purana Qila, a centrally protected monument at Mathura Road in New Delhi (hereinafter referred to as subject land) is under challenge in this writ petition. In proceedings under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the petitioner's eviction by the Estate Officer has been upheld in appeal vide order of 8th February, 1989 (Annexure F), which is impugned herein. Petitioner claims to be a Mahant of Sri Kunti Devi Mandir inside Purana Qila at Mathura Road, New Delhi and asserts that by virtue of order of 28th August, 1986 of the Civil Court, respondent- Union of India has been injuncted from dispossessing the petitioner from the subject land/mandir. In appeal, the stand taken by the petitioner was that the Mandir on the subject land is 5500 years old and is being maintained since the year 1880 by the great grandfather of the petitioner. The claim of the petitioner is that he is performing Puja in the aforesaid Mandir on the subject land since the year 1976 and prior thereto, his parents were performing the Puja

in the aforesaid Mandir.

2. It is the contention of petitioner's counsel that Sri Kunti Mata Mandir has not been taken over or declared as Archaeological monument by the Central Government under the provisions of "The Ancient Monuments and Archaeological Sites and Remains Act, 1958" and the said Mandir still exists in the revenue record. During the course of hearing, attention of this Court was drawn by learned counsel for the petitioner to translation of Wajib-ul-Arz of the year 1880 pertaining to village Inder Prasag, Tehsil and District Delhi to highlight that Shivala was located inside the old fort but no one was residing in the Shivala and the structure of Shivala was not towards the village.

3. According to petitioner's counsel, demarcation of the subject land was got done in the year 1960 or so by the Archaeological Department and Ashoka trees were planted around the subject land and with passage of time, some small rooms around the said temple came into existence to serve as Dharamshala and a room for the priest.

4. It is the assertion of the petitioner that in the year 1962 the Government had got the whole of the Purana Qila vacated from the Refugees etc. but the petitioner was allowed to remain there. When petitioner had apprehended that demolition of the aforesaid Mandir by the Archaeological Department, he had filed the Civil Suit for injunction in the year 1981, which was decreed in the year 1986 restraining the respondents from demolishing the Mandir without following the due process of law. Copy of the Civil Court order of 28th August, 1986 (Annexure- B) is relied upon by the petitioner to retain his possession over the subject land.

5. The contention advanced on behalf of the petitioner is that though Purana Qila has been declared to be ancient monument but the Mandir in question in Purana Qila has not been so declared nor any resort has been made by the Archaeological Department to compulsorily acquire the Mandir in question as an ancient monument and since the Mandir in question in Purana Qila does not belong to the Central Government, therefore the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, cannot be evoked to evict the petitioner from the subject land as petitioner by virtue of being the Pujari of the Mandir in question has right to remain on the subject land and to perform the Puja and to take care of the Mandir and that the Government has a limited right of supervision of the ancient monument-Purana Qila and thus, the eviction from the petitioner from the subject land by illegally resorting to proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, is per se bad in law and so the impugned eviction of the petitioner from the subject land/Mandir deserves to be quashed.

6. According to the learned counsel for the respondents, vide Notification of 11th December, 1913, Purana Qila was declared as protected monument and thus bringing it under the definition of public premises under the Public Premises

(Eviction of Unauthorized Occupants) Act, 1971, and the Superintendent of the Department of Archaeology has been notified as the Estate Officer under the aforesaid Act in respect of the ancient monuments. It was submitted by learned counsel for the respondents that the Mandir in question on the subject land has no historical or heritage significance and in fact this Mandir was set up by the inhabitants of the Refugee Camps in Purana Qila for their worship and, therefore, there is no mention of this Mandir in the Notification of the year 1913 vide which Purana Qila was notified to be a protected monument.

7. Reliance was placed upon a Division Bench decision in Hari Shankar and Another Vs. Union of India (UOI) and Others, to assert that respondents are within their rights to proceed against any building constructed by any person at the Archaeological site and the Wajibul- Arz relied upon by the petitioner is not an authentic document and is thus denied. However, during the course of hearing, it was stated at the bar by learned counsel for the respondents that the petitioner can perform the Puja at the Mandir on the subject land but cannot remain with his family there as Section 13 of the Ancient Monument Reservation Act, 1904 mandates that the protection of the place of worship and its maintenance has to be done by the Government and without conceding that the Mandir in question is an ancient monument, its compulsory acquisition is prohibited by Section 10 of the aforesaid enactment. Attention of this Court was drawn to the Government Notification of 11th December, 1913 (Annexure-H) and the layout plan of Purana Qila to indicate that there is no mention of the Mandir in question in the Purana Qila and thus, the eviction of the petitioner from the subject land is eminently justified.

8. After having heard learned counsel for the parties and upon perusal of the impugned order and the material on record, I find that the stand taken by the petitioner in paragraph no. 9 of the petition regarding Government getting the Purana Qila vacated from the refugees in the year 1962 is not controverted by the respondents, who have stated in corresponding paragraph No. 9 of the Counter that the Refugees had vacated the Purana Qila but petitioner had somehow managed to remain in the Purana Qila unauthorizedly. Without availing of the opportunity to lead the evidence before the Estate Officer, the petitioner cannot now turn around and assert that full opportunity of hearing was not afforded to him as the petitioner had admittedly filed reply (Annexure-D) to the show cause notice (Annexure-C).

9. The questions of fact regarding the existence of the Mandir upon the subject land sought to be raised by relying upon some revenue record (Annexure-A) in the writ proceedings is impermissible as the petitioner ought to have led evidence in respect thereof before the Estate Officer in the eviction proceedings. Such a view is being taken as respondents dispute the correctness of the revenue record (Annexure-A), which in fact does not disclose about the existence of a Mandir in Purana Qila.

10. So far as reliance placed upon Civil Court order (Annexure-B) by the

petitioner's counsel is concerned, it does not advance the case of the petitioner as the Civil Court in a suit for injunction has returned the finding that the Purana Qila is a protected monument and the petitioner cannot be evicted from the subject land without following the due process of law.

11. Respondents have taken recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, to evict the petitioner from the subject land which is being now assailed by petitioner's counsel on the ground that though the subject land where Mandir in question exists is part of the Purana Qila, which is a protected monument but since the Mandir in question on the subject land has not been declared to be a protected monument, therefore, respondents cannot proceed against it.

12. To say the least aforesaid submission is preposterous as it does not stand to reason, as to how the portion of an ancient monument can be said to be a private property. As already noted, there cannot be any compulsory acquisition of an ancient structure which is periodically used for religious purpose. Sub-section 2 of Section 10 of "The Ancient Monuments and Archaeological Sites and Remains Act, 1958" prohibits it.

13. In the considered opinion of this Court, the stand of petitioner's counsel of the subject land on which there is a Mandir, being not public premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, does not hold good as the definition of public premises as contained in Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, mandates that any premises belonging to the Central Government would be the public premises. By no stretch of imagination, it can be said that an ancient monument so declared by the Central Government, whose upkeep is the responsibility of the Government, is not a public premises. Therefore, the aforesaid contention of the learned counsel for the petitioner stands repelled.

14. No doubt "The Ancient Monuments and Archaeological Sites and Remains Act, 1958" is a comprehensive enactment which deals with the protection, maintenance of protected monuments, right of access thereto, and makes the violation of the provisions of this Act penal but it does not provide a mechanism for eviction of persons found to be unauthorizedly occupying it. For the eviction of the unauthorized persons in occupation of the ancient monuments/archaeological sites, resort to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, has to be made. Along with the counter affidavit respondents placed on record copy of communication of the year 1992(Annexure-A) vide which the Superintendent of Archaeology of Archaeological Survey of India (ASI) has been designated as the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, for eviction of unauthorized occupants from the premises under the control of Archaeological Survey of India.

15. At the hearing, reference to some newspaper reporting regarding some literature pertaining to Delhi's Mahabharata connection by R.V. Smith by

petitioner's counsel, is of no avail as no such book purportedly written by R.V. Smith about Kunti Devi Mandir in Purana Qila was made available to the Court by the petitioner's counsel, even after the hearing of this matter had concluded. In any case, factual aspects raised in this petition which are disputed by respondents, remain untested and thus cannot be relied upon as the opportunity to lead evidence to establish the factual position as highlighted by the petitioner in this petition was not availed of by the petitioner before the Estate Officer during the eviction proceedings. Except bald assertion of petitioner that Mandir on subject land is being used since long for religious purpose, no tangible evidence was produced by petitioner before the Estate Officer nor any satisfactory evidence was led by petitioner in the eviction proceedings to establish his right to retain the subject land. Therefore, the finding returned in the impugned order regarding the subject land upon which a temple structure exists, being part and parcel of centrally protected Purana Qila, remains unassailable.

16. Having come to the conclusion that the ancient site - Purana Qila, a centrally protected monument would fall within the definition of the Z, I dismiss this petition while upholding the impugned order (Annexure-F). Interim order stands vacated. However, petitioner W.P.(C) No. 515/1989 Page 8 would be at liberty to offer puja at the Mandir on the subject land, during the permissible timings of access to the protected monument - Purana Qila. It goes without saying that inability of petitioner to establish the ancient character of the Mandir in Purana Qila would not absolve respondent - Archaeological Survey of India of its responsibility to scientifically determine the age of the Mandir in question and if it is found to be of ancient origin, then it would be the responsibility of the respondent - Archaeological Survey of India to protect and maintain it by strictly complying with the applicable provisions of the law. This petition is disposed of with aforesaid observations. No costs.