

(1997) 11 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1147 of 1997

Mangi Lal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 44

Citation : (1997) 3 RLW 2017 : (1998) 1 WLC 625 : (1997) 2 WLN 609

Hon'ble Judges : N.L. Tibrewal, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The present appeal has been preferred by the appellant u/s 18 of the Rajasthan High Court Ordinance 1949, against the judgment and order dated 09.9.1997, passed by the learned Single Judge in S.B. Civil Writ Petition No. 375/88.

2. The land in question originally belonged to the temple, known as "Asan Math Sthan Deva" and by two registered sale deeds, dated 07.2.1962 and 17.6.1964, the land measuring 24 bighas was transferred to one Narain Singh, predecessor-in-interest of the appellant, by Pujari of the temple Shri Rameshwar Puri, predecessor-in-interest of respondent No. 4, for considerations. On the basis of the said sale deeds Sarpanch of the village Panchayat passed the mutation orders on 30.1.1963 and 12.12.1964 and since then the appellants claim that they are in physical and actual cultivatory possession over the said land.

3. On the complaint of some resident of the village, the District Collector made a reference on 08.9.1983 to the Board of Revenue for cancellation of the said mutations dated 30.1.1963 and 12.12.1964, the said reference order is contained in Annex. 1 to the writ petition Respondent No. 2 accepted the reference by judgment and order dated 14.3.1986 contained in Annex.2, against which applications for clarification and review had also been rejected by the

respondent No 2 by orders dated 10.8.1987 and 19.10.1987, contained in Annexs. 3 and 4 to the petition respectively.

4. Being aggrieved and dis-satisfied, the appellants, claiming to be the legal heirs of Shri Narain Singh, filed the writ petition before this Court, as by that time, Shri Narain Singh had died.

5. As the appellants could not find any favour before the learned Single Judge and the said writ petition has been dismissed by the aforesaid judgment and order dated 09.9.1997, the instant appeal has been filed.

6. Heard Shri Sudesh Gupta, learned Counsel for the appellants.

7. It is urged by Shri Gupta that the land in dispute belongs to "math" and not to the "temple" and therefore, the provisions of Section 46 of the Rajasthan Tenancy Act, 1955 (hereinafter called the Act") are not applicable at all and he further submitted that none of the courts/ authority below considered this aspect though this issue could have tilted the balance in favour of the appellants. From the pleadings in the court or authority below, he could not point out as to on what basis it was the property of the "math" and not of the "temple." Even in the memo of appeal, the, appellants have not mentioned who was the "gaddinashin" of the "math" and reference has been made through out to Shri Rameshwar Puri, pujari of the temple. There can be no dispute to the proposition of law that "pujari" has no role to play in "math" and it is always headed by the "gaddinashin". As the appellants had not raised this point below, they cannot be permitted to raise this issue first time before this Court in writ/appeal, as, it involves the issues of facts, which would require investigation and inquiry in the matter. It is settled law that the a party cannot be permitted to take a new plea first time in the Writ Court, which requires investigation of facts.

8. In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, , the Apex Court has observed as under:

All point not raised before the Tribunal or Administrative authority may not be allowed to be raised for the first time in writ jurisdiction, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of-course a must

9. The same view has been taken by the Apex Court in the cases of A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd., ; A.M. Allison Vs. B.L. Sen, ; The Cantonment Board, Ambala Vs. Pyarelal, ; State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., ; Bhanwar Lal Vs. T.K.A. Abdul Karim through N.K. Mohd. Mustafa, ; and Rajeswari Amma and another Vs. Joseph and another, .

10. Shri Gupta has further urged that the reference was made after a lapse of 21 years and thus, the judgment and order of the Board of Revenue is void, being arbitrary and not in accordance with law. In support of his submission, Shri Gupta placed reliance upon a Division Bench judgment of this Court in Anandi Lal

v. State of Rajasthan and Ors. 1995(1) RLR 555 wherein this Court after placing reliance upon the catena of decisions of Hon"ble Supreme Court, particularly in the cases of The State of Gujarat Vs. Patil Raghav Natha and Others, ; Mansaram Vs. S.P. Pathak and Others, and Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, ; held as under:

If power is not exercised within reasonable time, the innovation of the power after inordinate delay and the exercise of the same after unreasonable length of time would be unjust, arbitrary and unreasonable. Therefore, the action taken by exercise of such power would be illegal and void.. .Therefore, ordinarily revisional powers.. .cannot be exercised after a period of one year.

(emphasis added)

11. It is settled law that power should be exercised within a reasonable time but what is reasonable time, is to be determined on the facts and circumstances of each case and the nature of the order which is under challenge.

12. In Anandi Lal's case (supra), this Court has simply said that revisional power should not be exercised after a long time, "ordinarily"; meaning thereby in exceptional circumstances, the power can be exercised even after inordinate delay e.g. in a case where an order under challenge has been obtained by fraudulent practice, as such order is void and honest. The issue of fraudulent practice will be discussed at a later stage, however, there being no terminus qua to reckon the period for the purpose of considering delay and laches, issue of delay would not arise. Thus, we are of the considered opinion that a case where order has been obtained by fraud etc., the power of reference can be exercised even after an inordinate or unreasonable delay, whenever it is brought to notice of the competent authority but it should not be after an unreasonable delay from the date on which the fact is brought to the notice of the authority concerned.

13. Section 46 of the Act, 1955 provides for exemption of obtaining Khatedari rights in exceptional cases. It includes the case of a minor and a person incapable of cultivating his holding by reason of physical disability or infirmity. An idol/deity can fall to both the classes i.e. a minor as well as a physically disabled or infirm person and the manager or the State is under an obligation to protect the interest of such a minor or disabled person. No person can acquire Khatedari rights in the land belonging to a minor. The object is laudable and based on public policy and, therefore, the deity cannot be deprived of his property by such a transaction, which has fraudulently been entered upon by the Pujari himself. It is the obligation/function of the State to look after the welfare of the deity being a person, may be juristic, may be a person on account of fiction of law but incapable to protect its interest being a perpetual minor and disabled physically. (Vide Ramlal v. Board of Revenue 1990 (1) RLR 161

14. In Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, , the Hon"ble Apex Court has observed as under:

When such an alienation has been effected by the shebait acting adversely to the interests of the idol even a worshipper can file the suit, the reason being that the idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest.

(emphasis added)

15. In the instant case, there is no doubt that by fiction, the deity/idol is to be treated as minor or physically disabled person. It has been recognised by the court from time and again by drawing the logical inference u/s 46 of the Act, 1955 that such a benefit is attracted to the deity. Thus, in a case where the worshipper himself has played a fraud upon the deity the transaction shall be deemed to be illegal. The deity is a Khatedar of the land and the Pujari can never acquire" the Khatedari rights because the provisions of Section 46 of the Act, 1955 put an embargo on it. (Vide Ram Kishandass v. Devilal and Ors. 1974 R.R.D. 290).

16. A Division Bench of this Court vide its order dated 12.9.1997 passed in D.B. Civil Special Appeal (Writ) No. 892/97 "Madanlal and Ors. v. State of Raj." and D.B. Civil Special Appeal (Writ) No. 893/97 "Colonel Girdhari v. State of Rajasthan" has taken the view that if any person has acquired the Khatedari rights in the land belonging to the deity, the said transaction is to be ignored being illegal and the deity was entitled to retain the possession as well as the Khatedari rights in such lands.

17. It has been mentioned in ground (g) to the writ petition that Shri Rameshwai Puri-the father of respondent No. 4 had already been entered as Khatedar in the Jamabandi of Samvat 2018 and similarly in ground (j), it has been mentioned that the said land was personal of Shri Rameshwar Puri. Further, in ground (h), it has been averred that Section 46 was not applicable as it was not a "temple" but was a "math". . .

18. The respondent No. 4 filed a reply wherein it was specifically mentioned that all the appellants were not even party before the Board of Revenue, therefore, they could not file the present writ petition. Moreover, ground (g) has also been denied in unambiguous and crystal clear terms that the land in question was entered in the name of the "temple" as Khatedar and Khatedari of the "math" was through its "pujari" Shri Rameshwar Puri. In a given case, the land of the temple can be given for cultivatory purposes by the trustees at a specifically willed instance and that too strictly on the terms and conditions mentioned therein and for a particular period determined between the trustees and the person who takes it on lease/rent etc. However, any person, who claims any right or interest on such property has to show prima facie authority on behalf of and bonafides vis-a-vis the public trust, i.e. the temple. Thus, in such circumstances, the revenue as well as the administrative authorities have a legal obligation to protect interest prejudicial to the effective exercise of a permanent domain and

right of property by the temples on their lands. In fact, the concession to the effect that a person cultivating the land of the temple can acquire Khatedari rights runs counter to the public policy and the basic concept that a deity is a perpetual minor and physically disabled person and his interests are to be protected. At the most, a cultivator can act as a guardian of the deity (minor) but he cannot be permitted to usurp over the rights and interest of such minor and disabled person.

19. There is another aspect of the matter. As the Khatedari rights had been acquired by Rameshwar Puri, Pujari, by playing fraud, the same cannot be recognised to have any sanctity under the law.

20. Chief Justice Edward Coke of England observed three centuries ago that "fraud avoids all judicial acts, ecclesiastical or temporal" quoted in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, where the Supreme Court further observed as under:

The courts of Law are meant for imparting justice between the parties. One who comes to the court must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person who's case is based on falsehood, has no right to approach the court.

21. Similarly, Lord Denning in *Lazarus Estate Limited v. Beasley* (1956) All. E.R. 341 observed as under:

No judgment of a court no order of ministers can be allowed to stand if it has been obtained by fraud. Fraud unravels every thing.

22. The same view has been reiterated by Hon'ble Supreme Court in *Union of India and others Vs. Jain Shudh Vanaspati Ltd. and another*, . Similarly, in *Union of India and Ors. v. M. Bhaskaran* 1995 Suppl. (4) SCC 100 Hon'ble Apex Court observed as under:

No court should be a party to the perpetuation of the fraudulent practice.. .. such a fraudulent practice cannot be permitted to be countenanced by a court of law.. By mere passage of time a fraudulent practice would not get any sanctity.

23. By virtue of Section 44 of the Evidence Act, even a judgment and decree of a competent court of law can be avoided and it also cannot operate against another party if such party successfully establishes that such a judgment has been obtained by fraud (vide *Ashrafi Lal v. Smt. Koili* 1995 (4) SCC 1638 AIR 1948 168 (Privy Council) .

24. In *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another*, , the Supreme Court has observed as under:

A Court of equity when exercising its equitable jurisdiction under Article 226 of

the Constitution of India, must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to prevent the law from crafty evasions and subtleties invented to evade law.

25. Similarly in the case of State of Maharashtra and Others Vs. Prabhu, , the Supreme Court has observed as under:

It is responsibility of the High Court as custodian of the Constitution to maintain the Social balance by interfering where necessary for the sake of justice and refusing to interfering where it is against the social interest and public good.

26. Moreover, it is settled law that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even in fraction of the rules of procedure. (Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, and Ganesh Trading Co. Vs. Moji Ram,) In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the Apex Court observed as under:

When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done...

27. Similarly in Noorduiddin Vs. Dr K.L. Anand, , the Apex Court observed as under:

The object of law is to meet out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment In the minds of the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almanac (sic) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice.

(emphasis added).

28. It is a plain and simple case of sabotage of public policy and legal philosophy. "Tribunals should be astute in the declaration of law or in its solemn judicial review or dispensation of justice to issue directions or mandamus against the law, constitutional comments or public policy." (State of Punjab and others Vs. G.S. Gill and another,).

29. In the instant case, the appellants cannot have a title better than respondent No. 4 and his predecessor-in-interest Shri Rameshwar Puri had obtained

Khatedari rights in his favour in contravention of the statutory provisions of Section 46 of the Act, the same is of no consequence whatsoever. The appellants being transferer cannot claim title better than respondent No. 4.

30. Thus in view of the above, the judgment of the learned Single Judge does not call for any interference and the appeal is dismissed accordingly. However, it is a fit case where the facts and circumstances warrant, in the interest of justice, to issue appropriate directions to the District Collector of Chittorgarh to evict the appellants from the land in question, if they are in possession, forthwith and restore the possession of the temple.

31. A copy of this judgment and order be sent to the District Collector, Chittorgarh immediately by the Registry of the Court, for compliance.