

(2015) 10 SHI CK 0105
In the High Court Of Himachal Pradesh
Case No : CWP No. 3635 of 2015

Mumtaz Ahmad

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 27-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : (2015) 10 SHI CK 0105

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Anjana Khan, Advocate, for the Appellant; V.K. Verma, Meenakshi Sharma, Addl. A.Gs. and Parul Negi, Deputy Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The facts leading to the filing of this petition are that the petitioner was appointed as Imam of the Masjid at Boileauganj and was alleged to be working as such without any complaint from any quarters till 22.7.2003 when for the personal reasons he was constrained to submit a conditional resignation which was duly accepted and he was permitted to work as an honorary Imam and in lieu thereof allowed to retain the accommodation in his possession with all facilities.

2. It is further averred that the conditional resignation offered by the petitioner was duly accepted by the Punjab Wakf Board on 31.7.2003. In the year 2006-2007, the properties under the supervision and control of the Punjab Wakf Board came to be transferred to the Himachal Pradesh Wakf Board as per the provisions of Wakf Act, 1995. Thereafter, in the year 2007 and onwards, due to some inimical causes and political vendetta, certain persons started malicious campaign against the petitioner and even got certain news papers and fabricated clips displayed on the television channel accusing the petitioner that he in his

capacity and position as Chairperson of the Haj Committee, had misused his position. It is further alleged that these were only bald allegations, because no FIR or daily diary report was ever lodged against the petitioner. However, these did lead to passing of a resolution by the Wakf Board on 5.2.2007 wherein a decision to discontinue the services of the petitioner from the post of Honorary Imam was taken and he was further directed to vacate the accommodation.

3. The petitioner claims that he repeatedly represented the matter between the years 2007 to 2015 but when nothing fruitful was done by the respondents, he was constrained to file the present writ petition praying therein the following substantive reliefs:

"1. That the resolution dated 5th February, 2007 (Annexure P-3) may kindly be set aside and quashed.

2. That the respondent may kindly be directed to allow the petitioner continue as honorary Imman in Boileauganj Mosque with accommodation and other facilities provided to him since long and still residing there.

3. That the entire proceedings initiated on the basis of said resolution may kindly be declared null and void."

4. The respondents in their reply have raised preliminary objections regarding the very maintainability of this petition. It is averred that the eviction proceedings initiated against the petitioner have attained finality upto this Court and as such, the petitioner is estopped to invoke the extraordinary jurisdiction of this Court. It is averred that the petitioner is estopped to file the present writ petition on account of his act, conduct, acquiescence, delay and laches. It is also averred that vide judgment dated 27.8.2011 passed in Civil Suit No. 7-S/1 of 2008 titled H.P. Wakf Board v. Maulana Mumtaz Ahmad, the Wakf Tribunal, Shimla had decreed the suit for possession of the guest house/mosque, residential accommodation (hujra) alongwith all the articles against the petitioner. He was also directed to pay use and occupation charges at the rate of Rs. 600/- per day on account of the premises being unauthorisedly occupied by him after his removal as an Honorary Imam. The findings in Civil Suit No. 7-S/1 of 2008 were unsuccessfully challenged by the petitioner in RFA No. 484 of 2011 and the same have now attained finality.

I have heard learned counsel for the parties and have gone through the records of the case carefully and meticulously.

5. It is more than evident from the records that the contentions being raised in this petition have already been considered and adjudicated upon by this Court in RFA No. 484 of 2011. It is apt to reproduce para 14 of the judgment, which reads thus:

"14. What emerges from the facts enumerated hereinabove, is that the defendant was terminated as honorary Imam on 29.1.2006, vide resolution No. 4/2006. He was directed to vacate the accommodation on 14.2.2007. The

defendant has attained the age of 62 years. It is the duty cast upon the Board to protect its property. The defendant, till date, has not assailed his termination as Imam of the mosque. The status of the defendant after order dated 14.2.2007, was of a mere trespasser. He was in unauthorized occupation of the mosque. He has no vested right to reside in the accommodation after his removal as Imam. He had also been using the portion of the premises of the mosque as school of Mohammadan studies without the permission of the plaintiff. He had also been using the portion of the mosque as guest house and charging money from the occupants. The accommodation where the defendant was running guest house is two storeyed. It cannot be believed that the defendant was not charging any amount from the occupants of the guest house. The property is situated in Boileauganj area. It is a commercial area. The Court below has rightly come to the conclusion that the plaintiff was entitled for use and occupation charges at the rate of Rs. 600/- per day. The learned District Judge (Wakf Tribunal) has correctly appreciated the evidence. The defendant was removed as Imam of the mosque."

6. Indisputably, the aforesaid findings have attained finality and, therefore, the instant petition is clearly barred by the principles of res judicata. The principles as envisaged under Section 11 CPC are equally applicable to writ petitions. Section 11 of the Code embodies the rule of conclusiveness as evidence, or bars the plea of an issue tried in an earlier proceedings in which the matter is directly and substantially in issue and have become final. In a later proceedings between the same parties or their privies in a competent court to try such subsequent proceedings, in which the issue has been directly and substantially raised and decided in the former of proceedings would operate as res judicata. Section 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to provide multiplicity of proceedings and accords finality to an issue which directly and substantially had arisen in the former of proceedings between the same parties or privies, decided and became final, so that the parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the court is saved. It is based on public policy as well as private justice. Doubtless the principle of res judicata is a fundamental doctrine of law, that there must be an end to litigation.

7. That apart, it would be noticed that vide resolution passed on 5.2.2007 not only services of the petitioner as honorary Imam were discontinued but he had further been directed to vacate the accommodation etc. but despite this, he did not choose to question this action separately and only defended the proceedings initiated by the respondents before the Wakf Tribunal which ultimately culminated into decision rendered by this Court on September 10, 2014 in RFA No. 484 of 2011.

8. Indisputably, the petitioner has slept over the matter for quite a considerable long time and has knocked the door of the Court after a gap of 8 long years and

above all, there is clear unexplained delay and laches in filing of the writ petition.

9. It is more than settled that this Court in exercise of its discretion will not ordinarily assist the tardy and indolent or acquiescent and lethargic. The petitioner cannot be permitted to have a belated resort to the extraordinary remedy, that too, once the issue has already been finally adjudicated upon by a coordinate Bench of this Court in RFA No. 484 of 2011 decided on September 10, 2014.

10. In Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, , the Hon"ble Supreme Court has dealt with the doctrine of delay and laches in the following manner:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years" delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others" ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

11. Ms. Anjana Khan, learned counsel for the petitioner would however argue

that in case the petitioner, who is aged person, is ordered to be evicted, it is not he alone who would suffer, but even 80 children, who are being provided Islamic education in the school (Madarsa) and otherwise are very poor and have come from different parts of the State, would also suffer.

12. Mr. B.S. Attri, learned counsel for respondents No. 2 and 3 has vehemently contested the aforesaid position and argued that the running of Madarsa in the mosque by the petitioner is itself totally unauthorized as the same is being run without any consent or permission from the respondent-Board. It is further argued that under the garb of running Madarsa in the mosque, the petitioner is unauthorisedly collecting donations, Zakat from various persons and organizations in order to collect money for his vested interest. The petitioner is also illegally collecting money from the children who are unauthorisedly kept in the mosque on the pretext of running Madarsa.

13. Be that as it may, the power of this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution is to ensure that rule of law prevails and not to issue directions or writ to perpetuate illegality or to act in disregard to the settled decisions, statutory provisions, regulations and policy decisions etc. and in such situation, this Court can only sympathise with the plight of such students who for no fault of their own are being dislodged. Here, it shall be apt to reproduce the following passage from the judgment delivered by the Hon"ble Supreme Court in K.S. Bhoir Vs. State of Maharashtra and Others, wherein it was held as under:

"11..... In such a situation one can sympathise with the plight of such students who for no fault of their own were to be dislodged. However, the compassion and sympathy has no role to play where a rule of law is required to be enforced....."

14. Similarly, in Sudhir Kumar Consul Vs. Allahabad Bank, the Hon"ble Supreme Court held as under:

"31. We have sympathies for the appellant but, in a society governed by the rule of law, sympathies cannot override the Rules and Regulations. We may recall the observations made by this Court while considering the issue of compassionate appointment in public service."

15. Lastly, Ms. Anjana Khan, learned counsel for the petitioner would argue that the use and occupation charges demanded by the respondents at the rate of Rs. 600/- per day are highly exorbitant and, therefore, the demand of the respondents should be quashed and set-aside especially when the petitioner is a senior citizen aged 71 years.

16. Even this argument is not available with the petitioner for the simple reason that the findings in this regard on the aforesaid issues have already been returned against him in RFA No. 484 of 2011 as is evident from the perusal of para 14 of the judgment (quoted supra) and the same have admittedly attained

finality.

17. In view of the aforesaid discussion, I find no merit in this petition and the same is accordingly dismissed alongwith pending application(s) if any, leaving the parties to bear their costs.