
(2019) 03 MP CK 0150

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1298, 3294 Of 2017

Praduman Kumar Jain

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Citation : (2019) 03 MP CK 0150

Hon'ble Judges : Sanjay Yadav, J;Vivek Agarwal, J

Bench : Division Bench

Advocate : Arun Dudawat, Neha Khan, Pratip Visoriya, Sangam Jain

Final Decision : Disposed Off

Judgement

Since both these petitions arise out of the common issue involved in them, with the consent of learned counsel for the parties, they have been heard analogously and are being decided by this common order.

It is fairly submitted by learned counsel for the parties that the issue raised in the present petitions is squarely covered with the order passed in WP.8970/2016 [Vinay Kumar Jain Vs. The State of M.P. & Ors.] and connected writ petitions decided on 22.11.2017 wherein in respect of the grievance raised by the petitioners against the action of Tahsildar, Pathari, District Vidisha (M.P.) for directing them to stop mining activities in the mines situated beyond 500 mts. from the Ancient Monuments and Archaeological Sites and Remains has been decided in following terms:

This communication formed the basis for causing inquiry by the Tahsildar, Pathari who submitted his report on 01/03/2016 reporting thereby that each of the mines is situated beyond 500 meters of the sites in question.

Evident it is from the communication dated 26.10.15 that the Superintendent of Archaeology, Bhopal Circle has relied upon the decision in Harsh Barua Vs. State of M.P. and others [WP.4364/2008] and Naresh Kumar Jatav Vs. The State of

M.P. and others [WP.1181/2009] to arrive at a conclusion that the mining is prohibited within 750 meters of Archaeological Sites and Remains. Bare perusal of the decision in Harsh Barua (Supra) reveals that the decision taken therein is on the basis of the decision by the Supreme Court in "Wasim Ahmed Saeed Vs. Union of India and others [(2002) 9 SCC 472]".

Relying upon the same, learned Single Judge in Harsh Barua (supra) observes:

"Hon'ble the Supreme Court in Wasim Ahmed Saeed Vs. Union of India and others, reported in (2002) 9 SCC 472, restricted even the construction of shops within a distance of 750 meters of the Dargah of Salim Chishti in Agra and that restriction is a reasonable restriction. In the present case, it is clear from the findings recorded by the Collector and also by the Archaeological Department that due to mining operations by the petitioner, in which petitioner had been using explosives, there is a danger to the national monuments. In such circumstances, the action of the Authority i.e. Collector with regard to cancellation of mining lease of the petitioner could not be said to be arbitrary or illegal."

Evident it is from the said observation that except the decision in Wasim Ahmed Saeed (supra) no other material has been commended at by the learned Single Judge while holding that the mining has been prohibited within 750 meters of Archaeological Sites and Remains.

In Wasim Ahmed Saeed (supra), the Hon'ble Supreme Court was dwelling upon the location of shops, hotels, tea-stalls permitted by U.P. Sunni Central Wakf Board or by the Archaeological Survey Of India around Dargah Complex and Agra Gate wherein by order dated 06.08.1996, their Lordships were pleased to order that "there shall be no shops, hotels, tea stalls permitted either by the U.P. Sunni Central Wakf Board or by the Archaeological Survey of India or by any other authority within 300 meters of the shrine." While dwelling upon the compliance reported by the U.P. Sunni Central Wakf Board and the Archaeological Survey of India, their Lordships were pleased to observe:

"2. In the affidavit of Shri D.V. Sharma, filed in this Court on 11-10-1999 on behalf of the Archaeological Survey Of India, it has been stated that Plot No.221/5 is a protected monument/site and therefore construction cannot be permitted of shops and for the shopkeepers to remain there. In this affidavit, it is further stated that Plot No.244/2 located between the Dargah complex and Agra Gate at a distance of approximately 150 metres from Agra Gate, Fatehpur Sikri is a suitable site for rehabilitating the shopkeepers. It is represented by Dr Dhavan that this Plot No.244/2 is 750 metres from the Dargah. If that be so, then it is certainly in compliance with this Court's order of 06-08-1996 which states that the new site should not be within the areas of 300 metres. The new site now proposed is not within 300 metres of the shrine but is stated to be within 300 metres of an archaeological monument. Proposed Plot No.244/2 may not be the best site in that respect but in any case, this is a site which is chosen and

recommended by the Archaeological Department and the State of U.P. and therefore, we see no reason as to why the shopkeepers who at the present moment are occupying Plot No.221/5 are not asked to shift to this plot.

3. It has been contended by Dr Dhavan that what is sold at these shops is essential for the purpose of the religious rites and the shops should not be shifted. Counsel for the Wakf Board also states that these shops should be near the Dargah. We fail to understand how the distance of 750 metres from the Dargah can be regarded as being so far away as to interfere with the religious rights of the pilgrims. In the affidavit, which has been filed by Mr. Sharma, it is stated that out of the 52 unauthorised shopkeepers only five to six are selling dhoop, dupatta and chadar. It is stated that the number of shopkeepers has increased to approximately 75 and apart from these five to six shopkeepers the others are selling various kinds of handicrafts, eatables, cold drinks etc. We do not agree that the contention that asking these shopkeepers to shift to a distance of 750 metres from the Dargah in any way violates anyone's constitutional rights."

Thus, apparent it is from the decision in Wasim Ahmed Saeed (supra) that the order was that no shops, hotels, tea stalls were permitted within 300 meters of the shrine. In the process of compliance thereof, the shops came to be located at the distance of 750 metres and on raising an objection on behalf of the shop-owners in respect of the distance at which shops were got located their Lordships were pleased to observe "We fail to understand how the distance of 750 metres from the Dargah can be regarded as being so far away as to interfere with the religious rights of the pilgrims." And that "We do not agree that the contention that asking these shopkeepers to shift to a distance of 750 metres from the Dargah in any way violates anyone's constitutional rights."

Close reading of the decision in Wasim Ahmed Saeed (supra), thus, makes it clear that the order for shifting the shops was beyond 300 metres and not 750 metres as is construed by the learned Single Judge in Harsh Barua (supra). This aspect is also ignored by the co-ordinate bench of this Court in Naresh Jatav (supra).

Being trite it is that the principle of law as laid down by the decision has to be understood in the background of the facts therein.

In "Commissioner of Customs (Port), Chennai Vs. Toyota Kirloskar Motor (P) Ltd. [(2007) 5 SCC 371]", it is held:

"37.The ratio of a decision as is well known, must be culled out from the facts involved in a given case. A decision, as is well known, is an authority for what it decides and not what can logically be deduced therefrom."

In "Bihar School Examination Board v. Suresh Prasad Sinha [(2009) 8 SCC 483]" it is held:

"18...The courts should guard against the danger of mechanical application of an

observation without ascertaining the context in which it was made."

In "Govt. of Karnataka and Ors. v. Gowramma and Ors [(2007) 13 SCC 482]", it was laid down:

"10. "12.... Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.). Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides'.

11. "15.....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclids theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

Keeping in view the aforesaid proposition regarding ratio decidendi, when the decision in Wasim Ahmed Saeed (supra) is examined in the context of facts mentioned therein, we are of the considered opinion that the Hon'ble Supreme

Court has categorically banned the shops or other structures to be constructed within 300 meters of shrine and not 750 meters as has been interpreted by the learned Single Judge and glossed over by learned Division Bench as would be of any help to the respondents herein which being influenced with the communication dated 26.10.2015 has taken recourse to stopping the mining activities at a place situated beyond 500 meters of Archaeological Sites and Remains.

In view whereof, since we do not find any justification on the part of State of Madhya Pradesh and its functionaries as also functionaries of the Archaeological Survey of India in raising any objection qua the activities of flagstone quarry beyond 500 metres of the Archaeological Sites and Remains, we are inclined to set aside the communication dated 26.10.2015, 16.06.2016, 19.10.2016 and 15.12.2016.

It is informed that by virtue of interlocutory order, respective petitioners are operating their mines. It is made absolute.

It will, still, be opened for the State of M.P. in exercise of its powers under Rule 28(1) to issue the fresh notification if the situation so warrants and increases periphery of prohibition, in exercise of the powers therein."

Present petitions are also disposed of in the same terms as in Vinay Kumar Jain (Supra).

At this stage, it is stated on behalf of the State that lease in favour of the petitioners expired in 2018.

Learned counsel for the petitioners while not disputing the fact that the lease has expired; however, submit that they have filed application of renewal thereof.

Be that as it may. Since in the present petitions the issue was as regard to the propriety of Tahsildar, Pathari, District Vidisha (M.P.) in stopping mining operations in the mines situated beyond 500 mts. from the Ancient Monuments and Archaeological Sites and Remains, we decide the issue as above; however, the same will not create a right in favour of the petitioners for renewal of lease which shall be subject to the merit of respective cases.