

(2015) 02 MP CK 0076
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3410/1998

Raje Virendra Shah and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 2(g), 5, 5(6)

Ancient Monuments Preservation Act, 1904 — Section 3

Citation : (2015) 02 MP CK 0076

Hon'ble Judges : R.S. Jha, J.

Bench : Single Bench

Advocate : Sanjay Sarwate, for the Appellant; Piyush Dharmadhikari, Panel Lawyer, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.S. Jha, J.—The petitioners have filed this petition praying for a direction to restrain the respondents from causing any obstruction in the use and enjoyment of the Deogarh Fort and its surrounding land and trees by the petitioners. By way of amendment the petitioners have also prayed for relief of a direction to the respondents to grant compensation or royalty as per prevailing market value as well as to quash the notification Annexures R-1, R-2 and R-3 which have been brought on record by the respondents alongwith their return.

2. The brief facts, leading to the filing of the present petition, are that the petitioners claim to be the descendents of the rulers who had constructed Deogarh Fort in Chhindwara District. It is alleged that they have been continuously, peacefully and uninterruptedly performing pooja in the temple inside the Deogarh Fort but were suddenly stopped in December 1997 by the Forest Officers and the Officers of the Archaeological Department and subsequently a letter dated 23.1.1998 was also issued to the petitioners in this regard.

The petitioners, being aggrieved, have filed this petition contending that the petitioners ancestors were the rulers of that area who had constructed the Deogarh Fort and that they have been the owner and have been in possession of the Fort and the surrounding land since then. It is stated that subsequently the property was taken over under the management and superintendence of the Court of Wards in exercise of powers under the Central Provinces Court of Wards Act, 1899, but later on vide notification dated 1.7.1955 the British authorities withdrew its superintendence of the property and handed it over to the ancestors of the petitioners. It is stated that since then they have been using the Fort and the land uninterruptedly but have been prohibited from using the same by the respondent Forest Authorities on the pretext of having declared the area as reserved forest and the Fort as an ancient monument which is under the control of the Archaeological Department.

The petitioners allege that they have not been paid any compensation nor has the property been acquired and in such circumstances the petitioners are entitled to the relief as claimed for.

3. The respondent no.3 has filed a return and has stated that the property in question was initially declared as an ancient monument under the provisions of the Archaeological Monument Preservation Act, 1904 vide notification dated 2.12.1913 and subsequently the said declaration was confirmed by notification dated 11.4.1925. Copies of both these notifications issued under the Act of 1904 had been filed as Annexures R-1 and R-2.

4. The respondent nos.1 and 2 have stated that the land in question was declared as a reserved forest land by notification dated 24.2.1879. The respondent State has also stated that the entire land in question was declared as reserved forest vide notification dated 24.2.1879 under the Indian Forest Adhiniyam, 1874. It is stated that in such circumstances the contentions of the petitioners are denied.

5. The respondent nos.1, 2 and 3 have further stated that the Fort in question has not been occupied by anybody since the last several centuries and has been under the maintenance, control and management of the Archaeological Survey of India since the time of its declaration as an ancient monument and handing over of the same to the Union of India after the State Reorganization Act in 1956. To counter the allegation of the petitioners, the respondents have filed photographs indicating the site of the Fort and the construction and rehabilitation work undertaken by the Archaeological Department and have also filed the statement of the expenditure incurred by them for the same from 2003 to 2008 vide Annexure R-IX.

6. The respondents have also stated that the Fort was infact taken over by the British Government and was ultimately declared as an Ancient Monument vide notification issued in the year 1913 and 1925. It is further stated that the area in which the Fort is situated is also declared as forest land in 1879 and in fact falls

within compartment no.154-A, Umranala Reserved Forest, Sub Range Mohkhed, Forest Range Chhindwara.

7. It is submitted that inspite of the aforesaid fact which was within the knowledge of all in view of the public notification issued by the concerned department, no objection, contention or claim was ever made by any member of the petitioners' family or the erstwhile rulers before the authorities and it is for the first time that the petitioners have filed the present petition before this Court raising the above grounds. It is submitted that the Fort in question is under the supervision and management of the British Government since 1913 and subsequently under the Archaeological Survey of India and in such circumstances as they are acting as a Manager and have the power to manage the said Fort since then, they are deemed to be the owner of the same in view of the provisions of Section 2(g) of the Ancient Monuments and Archaeological Sites and Remains Act 1958.

8. Both the respondents have however stated that they have never obstructed to the petitioners or their family members from entering into the forest area or in performing pooja or other customary religious observances as the same are protected and permitted under the provisions of Section 5 Sub Section 6 of the Act of 1958. The respondent State in its return has stated the following in para-7 as under:-

7. That in addition to above facts, the Central Government vide Gazette notification dated 9.4.1925, the Deogarh Fort is protected memorial under subsection(3) of Section 3 Ancient Monuments Preservation Act and the said property under supervision and central of the ancient department. There is no interference of the department of forest for movement in the Deogarh Fort. Copy of the said Gazette dated 9.4.1925 herewith filed and marked as Annexure R-3. The allegations made in the petition that the forest officials obstructed and restrained the petitioner in the year 1997 are specifically and categorically denied. The tourists allowed for visit and entry in Deogarh Fort by the ancient monument department. 9. The respondent no.3 Archaeological Survey of India in its return in para 5.9 has stated as follows:-

5.9 It is most humbly submitted that in the past each province had a separate Archaeological Department with its head at the centre. The local Provincial Government exercised the powers bestowed upon them by the Ancient Monument Preservation Act VII of 1904 and keeping in the interest of an ancient monument related to the cultural heritage of India declared it protected. On the reorganization of the States and their amalgamation into the unified Government of India these very protected monuments came under the clock of the Archaeological Survey of India vide S. 126 of the State Reorganization Act of 1956. The learned petitioners claims that the Central Government have not yet complied with the provisions contained in the Acts and Rules does not hold water nor does it stand to reason as to for what actions the rights they are claiming now which they should have initiated in 1913 or 1925 or in 1955. It is also

submitted that nearly 85 years have passed since Deogarh Fort has been declared protected and to raise a claim for compliance of the provisions contained in the Acts and Rules, only indicates towards and after though or shooting an arrow in the darkness. It is submitted that the land enclosed by the fortification wall is the property of the Central Government, by the virtue of the Fort being an ancient protected monument under the Sec. 2(g) of the AMASR Act, 1958 and the respondent no.3 is within its rights to prevent any damage to its property. However the petitioner can observe their religious practices in the temples located within the enclosed area of the Deogarh Fort in accordance with law as they themselves are bound by the law under S. 5(6) of the Act of 1958.

10. Having heard the learned counsel for the parties it is observed that it is an undisputed and admitted fact that after notification issued by the respondents in the year 1913 and 1925 declaring the property as an ancient monument and after coming into force the State Reorganization Act, 1956, the Fort is in possession of and is being managed by the Archaeological Survey of India. It is also undisputed that the surrounding forest in question is a reserved forest land in view of the statement made by the respondents on affidavit and the map and other documents filed by them as well as the notification issued under the provisions of the Indian Forest Act, 1879.

11. It is also undisputed that after issuance of the said notification, no objection or other claim was ever made by any of the erstwhile rulers or the ancestors of the petitioners and that the petitioners have approached this Court for the first time, for the same, after more than 85 years. At the same time it is also clear that the respondent authorities have themselves stated on affidavit that they have not and shall not interfere in the customary, religious rites and rituals performed by the family members of the petitioners nor would they prohibit their entry into the forest or into the Fort. It is, therefore, clear that the Archaeological Survey of India has clarified that the petitioners and others members would be permitted to enter the Fort subject to the restriction that have been provided and prescribed.

12. In the circumstances, the petition filed by the petitioners is allowed for the limited extent of the prayer made by the petitioners in relief clause no.3 and, therefore, in view of the statement made by the respondents before this Court on affidavit, and in accordance therewith the respondents are directed not to any obstruction in the enjoyment of the Deogarh Fort as far as the petitioners customary religious observances are concerned nor would the respondents prohibit the petitioners from entering the Fort subject to the restrictions and conditions prescribed. The forest department shall also not prohibit the petitioners excess to the Fort through the reserved forest subject to the provisions of the Indian Forest Act as well as the provisions of the Act of 1958 and the restriction laid down therein.

13. The prayer of the petitioners in respect of the other reliefs, claimed by the petitioners, is rejected on account of the enormous unexplained delay and

latches on the part of the petitioners in raising any claim in respect of the land in question.

14. With the aforesaid observation, the petition filed by the petitioners stands partly allowed. In the facts of the case there shall be no orders as to costs.