

(1975) 12 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 679 of 1975

Rana Muneshwar Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-1975

Acts Referred:

Bihar Minor Mineral Concession Rules, 1972 — Rule 5(2)
Constitution of India, 1950 — Article 226, 227, 25
Patna High Court Rules, 1916 — Rule 10

Citation : AIR 1976 Patna 198

Hon'ble Judges : Sarwar Ali, J;Nagendra Prasad Singh, J;H.L. Agrawal, J

Bench : Full Bench

Advocate : Kailash Roy, Awadh Kishore Prasad, Kamla Roy, N.K. Ambastha and Ram Suhawan Singh, for the Appellant; J.C. Sinha, Lakshmen Sharan Sinha, Shreenath Singh and Shiva Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—This writ application has been filed by the petitioner under Articles 226 and 227 of the Constitution of India, claiming himself to be the convenor of the "Protection Board for Ancient and Sacred Hills, Ramshilla, Pretshilla, Brahmayoni and Bara"bar of Gaya (Bihar)", for quashing a notification of the State of Bihar, dated the 8th June, 1974 (Annexure 2) and the consequent communication of the same date by the Mines Commissioner, Bihar, to the Collector, Gaya Respondent (No. 2) (Annexure 1). Annexure 2 related to a hill on the southern fringe of the town of Gaya, known as Ramshilla hill, and has been issued under Rule 5 (2) of the Bihar Minor Mineral Concession Rules, 1972 (briefly "the Rules") imposing certain restrictions on the grant of quarrying permit to the lessees who were allowed to intervene and have been added as Respondents Nos. 5 to 12 to this application by an order of the Bench dated the 28th April, 1975, declaring the entire eastern, northern and the western areas and 800 feet from the temple at the top of the said hill, towards the south, as reserved area for public purposes, in modification of an earlier notification dated

the 12th December, 1970; in exercise of the aforesaid provision of the Rules (of 1963) then in force (Annexure 5). By the earlier notification dated the 12th December, 1970, the State Government had reserved the entire Ramshilla hill along with the two other hills surrounding the town of Gaya, namely, Pretshilla and Brahmayoni hills for public purposes and had declared that no mining lease would be granted in these hills at all and the "existing leases will not be renewed after the expiry of their present terms".

2. By virtue of the impugned notification (Annexure 2) relaxing the restriction in the grant of quarrying permit on the southern side of the Ramshilla hill beyond a distance of 800 feet from the temple, the State Government has granted leases in favour of the intervening respondents for quarrying purposes which has led the petitioner to move this Court. At the time of admission, the respondents, who were then impleaded, were restrained from carrying on quarrying or blasting operations on all the three hills, directly or through any agency. As this order affected the right of the intervenor lessees, they moved an application for their addition, and as already stated above, they were allowed to be added as respondents and file rejoinder, if any.

3. The application was originally heard by a Division Bench of this Court composed of Mr. Justice Sarwar Ali and Mr. Justice Nagendra Prasad Singh, who by their judgment dated the 1st of October, 1975, differed in some of their conclusions. In the result, whereas Nagendra Prasad Singh, J. allowed the writ application and quashed the notification (Annexure 2) and the communication (Annexure 1) and restrained the respondents lessees from quarrying on the basis of the leases granted in their favour on the strength of the notification, Sarwar Ali, J. has held that the petitioner could not get any relief in this application inasmuch as the materials on the record were completely inadequate to establish that the right aforesaid is substantially interfered with by the grant of leases by the State Government. In consequence of this difference, this case has been laid before me.

4. In view of the elaborate statement of facts given in the judgment of my learned brothers, I would state only the necessary facts and the salient features of the case without going into other details.

The petitioner bases his claim under the provisions of Articles 25 and 26 of the Constitution as, according to him, quarrying operations on any part of Ramshilla hill amounted to an infringement of the protection guaranteed to the Hindu public of freedom of conscience and the right freely to profess, practise and propagate their religion. According to the case of the petitioner as made out by the long statements in the writ application, the whole of the Ramshilla hill has a special religious sanctity from time immemorial to the Hindu public who came from all over the country as well as from abroad every year in very large numbers for performing, inter alia, Shradh ceremonies and offering Pindas, a religious practice, being an essential part of their faith for the salvation of the souls of their ancestors. According to his further case, religious festivals and fairs

are held on the aforesaid hill, specially during Pitri-pakshha, Nav-Ratri, Shrawan and Shiva Ratri, when people assemble for performing Puja etc. according to their religious rituals and rites.

5. It is not disputed that at the top of the Ramshilla hill, there is an ancient temple of Lord Shiva, commonly known as Pataleshwar Mahadeva. There are other idols of Shiva and Parvati situated thereon. There are also temples of Ram, Lakshman, Sita and Vishnu on the hill and a staircase from the foot of the hill goes up to the temples.

6. In the different counter-affidavits filed in this case on behalf of different sets of the respondents, the above essential facts practically have not been controverted, namely, that there are temples on the hill and the Hindus worship the idols in those temples and perform various Pujas, according to their religious rites and rituals, including offering of the Pindas during the Pitripakshha for the salvation of the souls of their ancestors. On the basis of various scriptures, Gazetteers and other citations, which I shall briefly refer to a little later, it has been attempted to be established by the petitioner that the mention of the name of this hill along with two other hills, namely, Pretshila and Brahmayoni find place in the Smritis and Purans, According to the mythological "books, Ramshilla hill is the abode of Yama along with his two hell-hounds who have got to be worshipped on this hill so that they may not bark and bay at the unhappy spirits in the way to salvation, by offering Pindas by their descendants. Therefore, it has been claimed that the Hindus in general have a right to maintenance of the entire Ram-shilla hill for the observance and performance of the rituals and religious practices and faiths.

7. The main controversy that has been raised and which is the subject-matter of difference in the views of the two learned Judges is the extent and the area of the hill in question over which the ceremonies are performed. The scope for this controversy seems to have arisen on account of the statement made in paragraph 4 of the writ application itself. The relevant statement reads as follows :

"That the Hindu pilgrims from time immemorial have been visiting the said Ramshilla, Pretshilla and Brahmayoni hills and performing the religious rites, offering Shradh and Pinda at several Vedis spread over the said hills.

The expression "several Vedis" made in this paragraph seems to me the basis of the real controversy between the parties as well as the appreciation of the case by the two learned Judges composing the Bench. This statement perhaps created an impression in the minds of the respondents as well as the learned Judges, as it was apparently likely to create, that there were fixed Vedis on different parts of the hill, where alone the religious rites and ceremonies, including the performance of the Shradh ceremonies and offering of Pindas could be or were performed, whereas according to the argument that was advanced by Mr. Kailash Roy appearing in support of this application before me, the Shradh ceremonies

and Pindas were always offered by the Hindus who assembled in laksh, at any place of the hill. In other words, there was no fixed Vedis or places where alone the Shradh ceremonies and the Pindas. which are the most essential religious practices according to the Hindu faith and belief, could be offered, but they could be offered, and in point of fact are being so offered, at any place of the hill for the salvation of the souls of their ancestors according to the command in the scriptures, the source of the Hindu religion, and therefore, the respondents could not be permitted to do or carry on quarry operations on the hill which would seriously impair the freedom of conscience and the right of freedom of religion guaranteed under the Constitution under the aforesaid Articles.

8. Nagendra Prasad Singh, J. had formulated a question "as to whether the offering of Pindas over Ramshilla hill is one of the religious practices of the Hindus and an integral part of the Hindu religion", and in course of the consideration of this question, the learned Judge proceeded to refer to the various scriptures and authorities. He referred to some Slokas in Vayu Purana where Maharshi Narad spoke about the history and glory of a Shila which said that from the very touch of this stone people start going to heaven. In order to trace back the origin of this hill, he referred to the various Slokas to show that if Pind is performed on the same, the human being becomes free from Pretyni. In the scriptures, however, there is no reference to "Ramshilla" as such, but the book described that as Pret Parvat. The learned Judge has met the argument of the respondents that by reference to the scriptures, it could not be definitely said that the aforesaid Pret Parvat is same as the present Ramshilla and Pretshilla hills, by referring to a book known as "Sacred Complex in Hindu Religion"; written by Dr. L. P. Vidyarthi. Head of the Department of Anthropology, according to which the said Pret Parvat later on became known as Ramshilla. On reference to the various Gazetteers, namely, the Bengal District Gazetteers, Gaya; published in 1919, and the Bihar District Gazetteers, Gaya, 1957; he recorded a finding in paragraph 25 of his judgment that "it has to be held that offering of Pindas on Ramshilla hill constitutes an essential part of the Hindu religion and, as such, it can be said to be one of the religious practices of the Hindu community."

9. I have already observed that it was never challenged by the respondents that the offering of Pindas and performance of various religious ceremonies, such as Shradh etc., did not constitute an essential part of the Hindu religion or the religious practices of the Hindu community. Serwar Ali, J. in paragraph 2 of his judgment made this observation on this point :

"The right of worship at the temple and religious observances at the Vedis, is not in dispute."

10. Be that as it may, it has to be seen as to whether on the assumption of this fact, the petitioner has made out a case for the grant of any relief that the whole of Ramshilla hill should have been declared as reserved area and any modification and change in the stand or attitude of the State Government in that regard would amount to an infringement of the constitutional guarantee.

11. In support of his case, apart from the statements in the petition, the petitioner also annexed to the writ application various earlier orders and documents to show the previous stand and conduct of the Government itself. Earlier in the year 1968, when the State Government had granted leases to some persons for stone quarrying in the Ramshilla and the other two hills for a period of five years, there was a great commotion in the public, and in January, 1970. the State Government took a decision in pursuance thereof which has been quoted in extenso in paragraph 12 of the writ application. Where on reference to the sacred and religious nature as well as the historical importance of the three hills in question, it "reserved the Ramshilla Hills, Pret-shilla Hills and Brahmayoni Hills in the town of Gaya for public purposes", and later on the notification dated 12-12-1970 (Annexure 5) was issued, which has already been referred to earlier, and which fact has not been controverted in the counter-affidavit of the State. The matter was also agitated in the Parliament, and in answer to unstarred question No. 872, the Minister of Tourism and Civil Aviation, Government of India, said ;

"Sir. The Ramshilla Hill is a place of religious importance and is visited by pilgrims performing Shradha ceremonies at Gaya..... According to information received from the State Government..... The terms of these leases are to expire shortly and the State Government have decided not to extend them or grant any one in respect of the Ramshilla Hill. This decision has been taken with a view to protect the hill."

Reliance has been placed on the letter written by Shri Niti Raj Singh, then a Minister in the Ministry of Law and Justice, who had visited the Ramshilla hill on the 17th of September, 1971. Complaints were made to him by the public with respect to the illegal quarrying operations. He, accordingly, wrote a letter to the Chief Minister of the State of Bihar (Annexure 4) urging upon him

"..... I think this should be enough to stop any further digging of the hillock.

There are various other hillocks around Gaya from where stone could be brought I, therefore, trust that you would consider what I have stated above and pass such orders as you may think just after taking into consideration the religious importance of the place and sentiments of Hindu public at large....."

12. In answer to a Call-attention notice in the Bihar Vidhan Sabha on 20-6-1972, the State Government confirmed and reiterated its decision taken under the notification dated the 12th of December 1970 (Annexure 5) and re-assured the House that no further mining leases would be granted after the expiry of the existing leases (Annexure 8). Soon thereafter letters were written by the State Government, in the Department of Mines, to the petitioner informing the decision of the State Government that on the expiry of the existing leases in the year 1972, no fresh leases would be granted with respect to any quarrying operation of Ramshilla hill. Copies of the letters have been annexed as Annexures 9 to 12 to the writ application.

13. Reference now may be made to the filing of Title Suit No. 198 of 1972 by one Ajodhya Pd. and others against the various lessees under the provisions of Order 1, Rule 8 of the CPC in the Court of the Subordinate Judge, Second Court, Gaya, for a declaration that "the defendants had no right to make quarry or break any portion of the Ramshilla hill". A prayer for a permanent injunction was also made in the said suit. The trial court, on an application for interim injunction, granted only & limited injunction, which was confirmed, on appeal, by the District Judge, Gaya, and ultimately the matter, when came to this Court in Civil Revision No. 1142 of 1972, Sarwar Ali, J., who heard the revisional application, gave opportunity to the plaintiff to file a fresh application directing the trial Court to pass a fresh order in that regard. When an application for injunction was filed, the trial court again granted a limited injunction, allowing quarrying operations beyond or outside the Limit of 300 metres from the temple and the staircase leading to the said temple on the Ramshilla hill. The said order was confirmed on appeal, and Civil Revision No. 1017 of 1974 was dismissed by this Court with a direction to dispose of the title suit itself as early as possible. The said title suit, however, has since been withdrawn.

14. On behalf of the different sets of the respondents, it was contended that the ex-intermediary, namely, the Tekari Raj, before the vesting of the Ramshilla hill in the State of Bihar under the provisions of the Bihar Land Reforms Act had been granting mining leases and the quarrying operations were going on there for a long time past and that the State of Bihar as well after the vesting had been granting leases. It has further been asserted in the counter-affidavits that the whole of Ramshilla hill is not sacred so much so that there are Muslim graves at various places on the hill as also there are habitations on parts of it. Mr. Lakshman Siharan Sinha appearing for the State of Bihar raised an argument that the observance of the various religious ceremonies and practices were simple encumbrances which would amount to have been completely abrogated by virtue of the fact that the estate of Tekari Raj vested in the State of Bihar, free from all encumbrances.

15. Mr. Shreenath Singh appearing for respondents Nos. 5 and 7, the lessees, however, contended that the allegations made in the writ application were based on the claim on the customary rights alone, which were in the nature of a civil right, and had to be established by proper evidence and was not an enforceable right, per se as such, which could amount to any infraction of the protection envisaged under Articles 25 and 26 of the Constitution, as, according to him, the customary right may be acquired as well as lost by lapse of time and, therefore, the petitioner had to establish by proper materials that the rights claimed by him were still subsisting, apart from their extent and the manner of their exercise.

16. I do not feel impressed by the contention urged on behalf of the respondents. I have sufficiently indicated that the performance of Shradh, offering of Pindas and observance of other religious ceremonies and rites are integral part of the Hindu religion and religious practices which, as a fact, were

not controverted by any party, nor the judgments of either of my learned colleagues indicate that. Simply, therefore, that either the ex-intermediary or his successor, the State of Bihar, had granted leases for quarrying purposes and that no sufficient or proper objection was raised on the earlier occasions, it cannot be said that on that account the rights of the Hindu public were themselves lost. In any view of the matter, in view of a clear finding recorded by Nagendra Prasad Singh, J. on reference to the various religious scriptures and texts, with which I respectfully agree, it cannot be accepted that the religious ceremonies and practices performed by the Hindus, referred to above, were customary in nature. I, however, do not place much importance to the other observances, such as holding of religious festivals and fairs and the performance of Pari-karma, etc. of the hill, which, apart from being controverted by the respondents as a fact, were also said to be forming not as an integral part of the religion. For the decision of this case, consideration of this controversial performances is not very much relevant.

17. It has been well established by authoritative pronouncements of the Supreme Court that the petitioner is not required to be put to the proof of the religious doctrines or beliefs of the Hindu public. In the case of *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , it was held that the freedom of religion under Article 25 of the Constitution includes not only freedom to believe in or profess any religion, but also freedom in regard to the religious practices, i. e., acts done in pursuance of religion, and a Court of Law has nothing to do with the soundness or un-soundness of a particular religious doctrine. Men may believe what they cannot prove. Religious experiences which are as real as life to some, may be incomprehensible to others, yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before law. It is, no doubt, true that courts are empowered to decide as to what constitutes an essential part of a religion with reference to the doctrine of a particular religion, including practices which are regarded by the community in question as a part of its religion and what were mere religious practices, nonetheless; as already indicated above, there has been no controversy between the parties that the practice of performing of Shradh and offering of Pindas by the members of the Hindu community did not constitute an essential and integral part of their religion.

In the case of *Seshammal and Others, Vs. State of Tamil Nadu*, , it was observed by the Supreme Court that the protection under Articles 25 and 26 of the Constitution is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and, therefore, contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion.

18. To adopt the line of least resistance, I have already left out of my consideration the case of the petitioner of performing Parikarma around the hill and holding of religious fairs, etc., which might or might not be essential parts of

the religious practice, and I am proceeding to arrive at my conclusion only with reference to the basic rituals, practices and performance of the Shradh ceremonies and offering of Pindas, admittedly being the acts and rituals performed by the Hindu public as integral parts of their religion for salvation of the souls of their ancestors.

19. Now it has to be seen as to whether the petitioner is entitled to succeed in this writ application on the basis of these factors alone. In other words, whether the notification (Annexure 2) and the communication (Annexure 1) can be outright quashed and cancelled and the lessees be restrained from operating under the leases granted to them. In order to examine this basic question, I would again refer to some of the statements made in the writ applications. In paragraph 4, it has been stated as follows :

"That the Hindu pilgrims from time immemorial have been visiting the said Ramshilla, Pretshilla and Brahmayoni Hills and performing the religious rites, offering Shradh and Pinda at several Vedis spread over the said Hills. The entire hills aforesaid are sacred places

Later, in paragraph 8, it has been further stated :

"That according to ancient Hindu Mythology, the entire Ramshilla, Pretshilla and Brahmayoni Hills are peculiarly devote to "Yama" and evil spirits who have to be propitiated for the salvation of the souls of the ancestors of the Hindus offering pinds. The Hindu Mythology further declares that Ramshilla Hill is also the abode of "TWO HELL HOUNDS" who must be worshipped on that Hill so that "they may not bark and bay at the unhappy spirits" in the way to salvation after Gaya Shradh by their mundane descendants."

In paragraph 9, it has been further asserted :

"..... the entire Ramshilla, Pretshilla and Brahmayoni Hills are places of pilgrimage and worship for the Hindus and the entire hills have got a particular religious sanctity attached to it since indefinite period....."

20. On examining the statements and construing the writ application as a whole, it appears to me that the petitioner intended to make out a case that the worship and the performance of the religious ceremonies on the hill ere being held by the Hindu public on account of the religious belief that it was the abode of "Yama" who could be appeased by the performance of certain religious practices, such as offering of Pindas and performance of other ceremonies relating to the performance of the Shradh of the ancestors for the salvation of their souls and that such ceremonies were performed and could be performed at any part of the hill, and not at any particular or fixed places. It is, no doubt, true that the petitioner has also stated that there were several Vedis spread over the said hill, an ambiguous statement perhaps result-Ing in the difference of opinion and putting the petitioner by the learned Judges to prove this fact by proper material. Nagendra Prasad Singh, J. on reference to the various documents and the

scriptures has proceeded to accept this aspect of the case and clearly observed that the State Government could not have issued the two Annexures without properly examining the religious nature of the hill and the religious practices being performed thereon, although he declined to decide the issue finally himself as to whether the whole of the Ramshilla hill was connected with those practices and left it to be re-examined by the State Government itself.

21. In my considered opinion, however, the position seems to be admitted by the State of Bihar by its various conducts and declarations made from time to time by issuance of various notifications and making of communications and declarations, already referred to earlier; categorically admitting the claim of the Hindu public that the whole of the hill was sacred in nature and a renowned religious place, where lakhs of pilgrims inspired by their religious feeling visited every year for performance of the various religious ceremonies and practices. The definite and settled view of the State Government which was founded on consideration of the relevant materials, suddenly underwent a revision after the passing of the injunction order in the aforesaid title suit. It appears to me that taking shelter under and purporting to derive support from the said order in the injunction matter, the State Government went back from its previous declarations, thinking that it could now take advantage out of the decision where a Court of Law had decided as to what was the area which alone could be held to be the religious part for performances and observances of the various practices, rituals and ceremonies by the Hindu public. The order apparently being advantageous to the Government, it at once made it a basis for re-issuing or modifying its previous stand and declaration. The stand is fully manifested in the statement made in the communication (Annexure 1) itself which specifically refers to and relies upon the District Judge's order dismissing the appeal, holding that only that part of the Ramshilla hill on which there was the temple and the staircase, was sacred from the religious point of view. After stating this fact, it also very specifically mentioned that the various lessees had applied for renewal of their leases by virtue of the above decision of the District Judge. It is, no doubt, true that it also states that the State Government had appointed a High-Power Committee to go into the question of the propriety of the renewal of the mining leases; nonetheless, the reservation of an area of 800 feet only, even less than the area fixed by the learned District Judge {300 metres}, in the impugned notification (Annexure 2) as well as in the communication (Annexure 1) is made with particular reference to the protection of the temple and the staircase only having no regard or even mention of the essential and basic case of the Hindu public that the whole hill as such is sacred, and according to the scriptures and texts, was the abode of Yama and the evil spirits who had to be propitiated for the salvation of the soul of the ancestors of the Hindus by offering Pindas on the hill.

The decision of the Civil Court in the injunction matter was simply an interlocutory order and not the final decision of the question raised for decision in the suit. The State Government, therefore, should not have taken the said order

as the basis or foundation as a final adjudication of a competent Court deciding the main issue in the suit binding on the parties. If I may say so with respect, this aspect of the matter has been completely overlooked. In my view, this part of the petitioner's case, which forms the foundation of this writ application, did not require any proof by production of evidence and materials aliunde, as this application is not directed for any civil or customary right requiring proof of the existence of the same. I, therefore, do not find any force in the contention of Mr. Shreenath Singh appearing for some of the lessees that the claim of the petitioner was essentially based on customary rights. It might be true that after referring to the observances of the aforesaid religious practices, the petitioner in the writ application has also said at one place that the Hindu public have acquired a customary right for performance of those customary rights; but in my view, on reading the application as a whole, it cannot be said that the basis of the petitioner's claim is any customary or civil rights. Once it is held and found that the aforesaid ceremonies are religious in nature, they are not required to be proved by evidence aliunde as they are being performed from time immemorial.

22. Some argument was also advanced on behalf of the learned counsel appearing for different sets of the respondents that the petitioner did not sufficiently allege in the writ application, either originally or even after the amendment, that the State of Bihar had not considered the report of the High-Power Committee or the relevant facts and, therefore, it could not be urged on behalf of the petitioner that Annexure 2 was based only on the order in the injunction matter and had not taken into account the other religious practices and ceremonies being observed on the Ramshilla Mil by the Hindu public. Pressing this contention it was further argued that it was not necessary in the notification to mention all the relevant facts which led the State Government to issue the same in modification or at variance of its earlier decision. In other words, if the order was a non-speaking order, the same cannot be cancelled on this account alone.

23. The above noted contention of the learned counsel for the respondents, on the facts of this case, is of no consequence, The notification (Annexure 2) specifically states the purpose for which the reservation of a part of the Ramshilla hill was made and it simply mentions that the reservation was being made of the area in question for the protection of the temple on the Ramshilla hill. In the circumstances, it is not open to the respondents to contend that in spite of this specific and precise statement in the notification, the Court should read into it the purported additional purposes and factors as well for which the notification was intended or that it had taken into consideration those further and essential elements as well. Reference has been made in the counter-affidavit of the State of Bihar that the State had constituted a Committee of high Government officials to go into the question. Before me, Mr. Kailash Roy contended that the Court had called upon the State to produce the said report, but it was not done. Mr. Lakshman Sharan Sinha appearing for the State, however, stated that the said report was produced before the Bench and the

learned Judges after perusing the same and perhaps being satisfied had returned it back to him. In this connection I may refer to the observation of Nagendra Prasad Singh, J. In paragraph 18, he says :

"It may be mentioned that the report of the Committee referred to above in the communication (Annexure 1) has not been produced before us. In my opinion, in all fairness, the respondent State should have produced that report, specially when it was going to modify its own earlier decision as a result of reconsideration of the matter,"

24. It is not the case of the State that the earlier notification dated 12-12-1970 (Annexure 5) and the assurance given at the floor of the House and the letters were issued to the petitioner without consideration of the relevant materials and necessary factors or that there was any change in the circumstances thereafter in between the issuance of Annexures 5 and 2 which justified or necessitated the State to revise or modify its earlier decision. In this view of the matter, I do not feel inclined to accept the statement made in the counter-affidavit of the State of Bihar that in issuing the impugned notification (Annexure 2), it had taken into consideration the religious aspects of the hill and the rights of the Hindu public which are protected under Articles 25 and 26 of the Constitution. By the way, it may also be mentioned that the area of the whole Ramshilla hill is only about 66 acres, and after the reservation of 800 feet towards the southern side of the hill, there is hardly a width of 200 feet left out. This distance of 200 feet also must be in steep slope and I do not think that for this small strip any economic or financial consideration should have so much weighed with the Government. The whole region around the town of Gaya is hilly area and quarrying operation can go in a big way all around.

25. Now remains for consideration the alternative ground raised by the petitioner challenging the legal validity of the two Annexures. Regulation 164 of the Metalliferous Mines Regulations, 1961, framed under the Mines Act, 1952, which prohibits any blasting operation within a radius of 300 metres from the place of firing in open cast working was considered as dangerous, and whenever such firing was to be done, permission in writing of the Chief Inspector of Mines had to be taken. Nagendra Prasad Singh, J. has found that the distance between the leased area and the staircase leading to the temple was even less than 800 feet at various places and, therefore, the notifications had overlooked this aspect of the matter as well. Sarwar Ali, J., however, did not find any merit in this contention as, according to him, the lessees were bound to carry on the mining operations in accordance with and on observance of all the Central and State Acts, Rules and Regulations, according to the terms of the various leases. I also do not find much substance in this point.

26. Before parting with this case I may also refer to another question which was canvassed at some length regarding the extent of the jurisdiction of this Court on the difference of opinion between the two learned Judges composing the Bench. According to Rule 10 of Chapter XXI-C of the Patna High Court Rules for disposal

of applications under Articles 226 and 227 of the Constitution of India. "In case of difference of opinion between the Judges composing the Division Bench, the point of difference shall be decided in accordance with the provisions of Clause 28 of the Letters Patent."

Clause 28 of the Letters Patent says that in case of difference of opinion between two Judges of a Division Bench as to the decision to be given on any point, such point has to be stated and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who heard the case, including those who first heard it. After hearing had proceeded at some length before me, on a question put by the Court that in the present case the learned Judges of the Division Bench having themselves not formulated the point on which they have differed, whether the matter should be sent back to them for the formulation of the point of difference or the difference of opinion which was manifest from the two separate judgments should be formulated by myself, it was ultimately agreed that since the hearing of the case had considerably advanced, it would be unnecessary and undesirable to stop the hearing at that stage and refer the matter for formulation of the point. Examining the judgments of my learned colleagues, the basic difference between them was as to whether the two Annexures 1 and 2 can be quashed by this Court in exercise of the writ jurisdiction or not, which has already been indicated by me in paragraph 3 of this judgment. For the reasons that I have given in the foregoing paragraphs of my judgment, I respectfully differ from the view of Sarwar Ali, J., for whom I have great respect and agree with the view of Nagendra Prasad Singh, J., however, for the reasons partly different; and hold that the petitioner is entitled to the reliefs claimed for and that the notification dated the 8th June, 1974, contained in Annexure 2 and the communication of the same date contained in Annexure 1 are vitiated in law and must be quashed and cancelled and the respondents be restrained from quarrying or conducting any mining operation themselves or through their agents on any part of the Ramshilla hill. Let an appropriate writ issue accordingly,

27. In the result, the application is allowed to the extent indicated above with costs. Hearing fee Rs. 250 only.