
(2009) 08 MP CK 0022
In the Madhya Pradesh High Court
Case No : W. P. No. 6338 of 2008

Rubina Danial and Others

APPELLANT

Vs

State of M. P. and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipalities Act, 1961 — Section 187

Citation : (2009) ILR (MP) 2897 : (2010) 1 MPLJ 569

Hon'ble Judges : A. K. Patnaik, C.J; P. K. Jaiswal, J

Bench : Division Bench

Advocate : Akash Choudhary, for the Appellant; Vijay Shukla, Dy. Advocate General For interveners Prashant Singh, For Municipal Council, Damoh Anshuman Singh, for the Respondent

Final Decision : Allowed

Judgement

P. K. Jaiswal, J.

Petitioners are protestants believing in Christianity and are permanent residents of District Damoh. They have no personal or vested interest in the Management of the Church but due to rivalry between two groups of Christian community, they have been deprived of sole Church which was demolished somewhere in Feb-March, 2005. This writ petition as Public Interest Litigation under Article 226 of the Constitution of India has been filed by the community at large with a sole prayer for construction of Church building so that the marriages and other religious ceremonies can be performed in the Church and they may offer their prayers in the Church building where they were offering their prayers to the year 2005.

Facts briefly stated are that an area of 3.82 acres of Sheet No. 41, Plot No. 86, situated at Damoh was granted on lease on 5-10-1942, in revenue Case No. 57-7/2 year 1940-41 to Secretary, Christian Missionary Society. As per revenue record an area of 2.48 acres of Plot No. 86/1 was recorded in the name of

Christian Mission, Damoh and rest of the area i.e. 1.32 acres of Plot No. 86/2 was recorded in the name of Secretary, Convention of Christ Church Damoh. On 24-9-1973, an application for renewal of lease over the aforementioned area of 3.82 acres was filed by Indian Church Council Disciples of Christ Church through Shri Henry Imanual, Chairman, Disciples of Christ Church, Damoh. During the pendency of the renewal application, United Christian Missionary/United Church of Northern Indian Trust Association, Napier Town, (UCMS) Jabalpur, Central India Christian Mission (CICM), Damoh, Ajay Masih and S. K. Das filed their objections before the respondent No. 3 and prayed that the lease be renewed in their name. Respondent No. 3 after hearing all of them decided the matter of renewal of lease vide order dated 10-7-2006 and granted renewal over an area of 1.32 acres of Plot No. 86/2 out of total area of 3.82 acres in favour of Disciples of Christ Church, Damoh.

Indian Church Council Disciples of Christ Church, Damoh (for short TCCDC) is a Society of Disciples of Christ Church constituted in the year 1960-61 and registered under the M. P. Societies Registration Act, 1959. The said Society was registered on 13-12-1962 vide Registration No. 286/1962. It is this "Society which is managing the Church and paying taxes to the local authority.

An old Church was constructed over an area of 1.32 acres of Plot No. 86/2, somewhere in the year 1895. When ICCDC took the decision to demolish the Church and started demolition in February, 2005, the present intervener Ajay Masih and S. K. Das challenged the said action by filing writ petition which was registered as W. P. No. 2333/2005, praying therein that Chairman, Disciples of Christ Church, Damoh be restrained from demolishing the Church. On 29-4-2005 interim order was passed restraining the demolition of Church. ICCDC through its Chairman filed an application for modification of the order dated 29-4-2005 and pointed out to the learned writ Court that the old Church was demolished on or before 29-4-2005 and construction of new Church is going on. The learned writ Court vide order dated 13-5-2005 directed the respondent No. 3 to verify the aforesaid facts and further directed that if the respondent No. 3 forms an opinion that the Church was demolished on or before 29-4-2005, he shall permit to continue with the construction. Order dated 13-5-2005 is relevant which reads as under:

13-5-2005

Shri Amit Shukla, Advocate for petitioners.

Shri Shashank Shekhar, Advocate for respondent No. 4.

Learned counsel for respondent No. 4 submits that before 29-4-2005 when this Court passed an order restraining the demolition of the Church, the church had already been demolished and the construction is going on. It is submitted by the respondent No. 4 that as the Church was already demolished, respondent No. 4 may be permitted to make construction.

Considering the aforesaid, it is directed that the respondent No. 3 shall verify the aforesaid fact and if the respondent No. 3 forms an opinion that the Church was demolished on or before 29-4-2005, respondent No. 3 shall permit the petitioner to continue with the construction. In case respondent No. 3 finds that it is not appropriate for continuation of the aforesaid construction, respondent No. 3 shall pass an appropriate order in this regard.

A copy of this order be communicated to respondent No. 3 for compliance.

On 7-7-2005 writ petition filed by the interveners (Ajay Masih and S. K. Das) was permitted to be withdrawn by this Court. After withdrawal of writ petition, MCC No. 2632/2005 was filed for correction of order dated 13-5-2005. The said MCC was disposed of by order dated 16-12-2005 making the correction in the order dated 13-5-2005 and directing the Collector, Damoh who was seized with the matter to consider the contentions raised by the parties and grant permission to Disciples of Christ Church, Damoh, if he finds it appropriate, after hearing both the parties. This order was passed by the learned Single Judge because an objection was raised before the learned Single Judge that the lease in respect of the land on which the Church was to be constructed, has not been renewed and an objection for renewal has been submitted by them and further, without any permission of the Municipal Council, no construction can be permitted on the land by the Disciples of Christ Church, Damoh. Order dated 16-12-2005 passed in M.C.C. No. 2632/2005 is relevant which reads as under :

16-12-2005

Shri Shashank Shekhar, learned counsel for the petitioner,

Shri Prashant Singh, counsel for respondents Nos. 4 and 5.

Petitioner has filed this application for correction in the order dated 13-5-2005, by which this Court has issued following directions :-

Learned counsel for respondent No. 4 submits that before 29-4-2005 when this Court passed an order restraining the demolition of the Church, the church had already been demolished and the construction is going on. It is submitted by the respondent No. 4 that as the church was already demolished, respondent No. 4 may be permitted to make construction.

Considering the aforesaid, it is directed that the respondent No. 3 shall verify the aforesaid fact and if the respondent No. 3 forms an opinion that the church was demolished on or before 29-4-2005, respondent No. 3 shall permit the petitioner to continue with the construction. In case respondent No. 3 finds that it is not appropriate for continuation of the aforesaid construction, respondent No. 3 shall pass an appropriate order in this regard.

A copy of this order be communicated to respondent No. 3 for compliance.

It is submitted by the petitioner that in 2nd para of the order in 4th line, this Court has permitted to continue with the construction, while in place of

"petitioner", "respondent No. 4" should have been typed. It is submitted that the aforesaid error is apparent on the face of the record.

Learned counsel for respondents Nos. 4 and 5 opposed the prayer and submitted that in fact the order dated 13-5-2005 was an interlocutory order and subsequently the writ petition was dismissed vide order dated 7-7-2005 and the interim order has merged into the final order and even if order dated 13-5-2005 is corrected the petitioner would not get any benefit of correction. Apart from this the lease which was in favour of Secretary, Christian Mission and Secretary, Convention of Church expired in the year 1963. The petitioner though has filed an application for renewal of the lease, but respondents Nos. 4 and 5 have objected to it. The State Government on the representation of respondents Nos. 4 and 5 permitted respondents Nos. 4 and 5 to object the renewal of lease. For construction of building a due permission from the Municipal Council is required. The petitioner without obtaining any permission of Municipal Council has started construction which is not permissible under the law. Apart from his by order dated 2-7-2005 the Collector Damoh also sought direction from this Court.

To appreciate rival contention of the parties from the perusal of order dated 13-5-2005, it is apparent that there is some typing mistake in the order. The entire order shows that such permission was sought by respondent No. 4, who is applicant herein and this Court directed that Collector shall permit respondent No. 4 to continue with the construction as at the relevant time the construction was going on by respondent No. 4, who is petitioner herein. In the aforesaid circumstances the order dated 13-5-2005 is corrected and in 2nd para in fourth line where it has been typed as "shall permit the petitioner to continue", it shall be read as "shall permit the respondent No. 4 to continue".

So far as the objection raised by respondents Nos. 4 and 5 are concerned that the lease has still not renewed and respondents Nos. 4 and 5 have submitted their objection for renewal and without any permission from the Municipal Council no construction will be permitted to the petitioner or the matter is seized by the Collector, Damoh as reflects from the order dated 2-7-2005 Annexure P-6 filed in W. P. No. 6978/2005, in which the Collector considering the contention of the parties found that the construction has been started by the petitioner and because of anomaly in the order dated 13-5-2005 a specific direction is necessary by the Court no directions are needed at this stage. As the matter is seized by the Collector, it will be appropriate that all the contentions raised by the parties herein, may be considered and decided by the Collector after hearing both the parties. The Collector shall be within his jurisdiction to grant renewal to the petitioner, which is Disciples of Christ Church, Damoh, if he finds it appropriate after hearing both the parties.

With the aforesaid direction, this application is finally disposed of.

The grievance now made before us by the present petitioners is that although in the meanwhile the lease of the land has been renewed in favour of the Disciples

of Christ Church, Damoh and permission has also been granted by the Municipal Council, Damoh for construction of Church on the land leased out in favour of Disciples of Christ Church, the Collector, Damoh is not granting permission for construction of Church though sufficient funds are available with the Church Council of Disciples of Christ Church, Damoh.

The respondents/State have filed their return and have taken a stand that the matter regarding grant of permission to construct the Church is pending before the Collector, Damoh. Some of the petitioners are participating in the proceedings and matter is subjudice before the Collector, Damoh. It is also pointed out by the learned counsel for the respondents that the present interveners, namely, Ajay Masih and S. K. Das has filed W. P. No. 18499/2006 which was disposed of on 14-12-2006 and on the basis of certain observations made in the said order the Registrar, Public Trust registered the Society of Disciples of Christ Church, Damoh as Public Trust in the name of "Disciples Christ of Church, Damoh vide order dated 13-2-2007, but this order dated 13-2-2007 has been challenged in Writ Petition No. 3623/2007 and W.P. No. 10326/2007 and the learned Single Judge has passed an order on 14-3-2007 staying the operation of the impugned order dated 13-2-2007 passed by the Registrar Public Trust, Damoh, registering Disciples of Christ Church, Damoh as a Trust and until the order dated 14-3-2007 is vacated or the dispute in the said writ petition is decided, the Collector, Damoh could not grant permission to Disciples of Christ Church, Damoh for construction of the Church.

On 5-8-2008 this Court after hearing the learned counsel for the parties and after taking note of the subsequent developments and events in the matter and also of the facts that there is a serious dispute with regard to management of Disciples of Christ Church, Damoh, while one group is keen that the management should be in the hands of the trustees of the Trust registered by the order dated 13-2-2007 of the Registrar Public Trust, Damoh, the other group is opposed to the Disciples of the Christ Church, Damoh being managed by the trustees of the trust registered by the order dated 13-2-2007 passed by the Registrar, Public Trust, Damoh, observed that such disputes with regard to the management of Disciples of Christ Church, Damoh should not stand in the way of construction of the Church which is a place of worship for the Christian Community and accordingly directed that the respondent No. 3-Collector, Damoh or any other Officer of the Administration or the Police will not restrain the Church Council of Disciples of Christ Church, Damoh to construct the Church on the land measuring 1.30 acres in accordance with the permission granted by the Municipal Council, Damoh. The relevant part of interim order dated 5-8-2008 reads as under :

We, accordingly direct that the Collector, Damoh or any other Officer of the Administration or the Police will not restrain the Church Council of Disciples of Christ Church, Damoh to construct the Church on the land measuring acre 1.30 in accordance with the permission granted by the Municipal Council, Damoh.

The dispute with regard to the management of Disciples of Christ Church will be

decided at a later stage when the writ petitions will be heard finally by the Division Bench analogously.

After passing of order dated 5-8-2008, Municipal Council, Damoh filed an application for intervention stating that sanction/permission for construction of Church on 21-12-2005, has subsequently been stayed by the Municipal Council, Damoh because of deviation from the permission of sanction vide order dated 1-2-2006. This Court after taking note of the said fact in its order dated 14-8-2008 directed that the Church Council of Disciples of Christ Church, Damoh will continue to construct the Church in accordance with the permission/sanction granted by the Municipal Council, Damoh and liberty was granted to the Municipal Council, Damoh that in case there is any deviation from the permission/sanction, it will be open for the Municipal Council, Damoh to move this Court by appropriate application.

Ajay Masih and S. K. Das, the interveners challenged the interim order dated 5-8-2008 by filing Civil Appeal No. 1604-1605/2009 before the Apex Court. The Apex Court by order dated 2-3-2009 set aside the interim order on the ground that the interim order as passed by the High Court during the pendency of the writ petition was not appropriate as that was in essence granting final relief claimed in the writ petitions and observed that the three writ petitions i.e. W.P. No. 6338/2008, W. No. 3632/2007 and W. P. No. 10326/2007 be disposed of as early as practicable, preferably within a period of four months from the date of receipt of the Supreme Court order.

According to the petitioners, the lease of the land on which the Church building is being constructed has been renewed in favour of Disciples of Christ Church Damoh, there is valid permission and sanction from the Municipality of Damoh in favour of Disciples of Christ Church for construction of the Church building, but without any rhyme or reason the construction has been stopped. The petitioners are aggrieved by the multiplicity of the litigations regarding the Church building and are more aggrieved that the members of their community have been deprived to offer services and prayers in Church building, which was in existence prior to its demolition in the month of February, 2005. The petitioners have also submitted that at present there is no Church building in the entire District of Damoh and, therefore, they may be permitted to construct the new Church as per permission granted by the Municipal Council, Damoh.

Shri Vijay Shukla, learned Dy. Advocate General submitted that as per order dated 16-11-2005 passed in MCC No. 2632/2005 the matter regarding grant of permission to construct the Church is pending before the Collector, Damoh and some of the petitioners are participating in the proceeding and there is no order for grant of permission for construction of Church. He further submitted that the issue regarding registration of Trust is also pending in W.P. No. 3632/2007 and W.P. No. 10326/2007 and unless these issues are decided, no permission for construction of Church can be granted by the Collector, Damoh. When we asked the learned Dy. Advocate General under which provision of law permission for

construction of Church is required from respondent No. 2-Collector, Damoh, he expressed his ignorance and rightly submitted that for construction of Church permission is "required from Municipal Council, Damoh, u/s 187 of M. P. Municipalities Act, 1961, He also pointed out that for the construction of Church, Municipal Council, Damoh granted permission on 21-2-2005 and sanctioned the plan.

Shri Prashant Singh, learned counsel appearing for the interveners (Ajay Masih and S. K. Das) submitted that the Disciples of Christ Church, Damoh is not a Trust under the M. P. Public Trusts Act, 1951 and cannot be allowed to construct the church building because pursuant to order dated 14-12-2006 passed by the learned Single Judge in W. P. No. 18499/2006, the Registrar under the M. P. Public Trusts Act, 1951 has directed that the Disciples of Christ Church, Damoh be registered as a Public Trust under the M. P. Public Trusts Act, 1951 and the Trust property situated at Civil Station, Damoh Nazul Sheet No. 41, 42, Plot No. 86/2 measuring 1.30 acres be registered as immovable property of the Trust.

The order passed by the Registrar under the M. P. Public Trusts Act, 1951 on 13-2-2007 directing that the Disciples of the Christ Church, Damoh be registered as a Public Trust and that the trust property situated at Civil Station Damoh Nazul Sheet No. 41, 42 Plot No. 86/2 measuring 1.30 acres be registered as immovable property of the Trust has been challenged in W. P. No. 3623/2007 and W. P. No. 10326/2007 which we have heard analogously with the present writ petition and in our separate order delivered today in the said two writ petitions we have held that the Disciples of Christ Church, Damoh was already registered as a Society under the M. P. Society Registration Act, 1959 and was deemed to be registered under the M. P. Society Registration Adhiniyam, 1973 and was governed by the various provisions of the M. P. Society Registration Adhiniyam, 1973 and it was not necessary that the Society be again registered as a Public Trust. In our aforesaid order delivered today in W. P. No. 3623/2007 and W. P. No. 10326/2007, we have also held that by the order dated 14-12-2006 of the learned Single Judge in W. P. No. 18499/2006, the learned Single Judge had disposed of the writ petition with only a direction that the Registrar of Public Trusts shall comply with sections 6 and 7 of the M. P. Public Trusts Act, 1951 and shall supply the certified copies of the entries of the register to enable the petitioners in the said Writ Petitions to file a suit but the petitioners have not filed the suit challenging the earlier order passed by the Registrar that the Society of Disciples of Christ Church, Damoh was already registered as a Society under the M. P. Society Adhiniyam, 1973 on 13-12-1962 and was exempted u/s 36(1)(b) of the M. P. Public Trusts Act, 1951 for further registration as a Trust under the Act of 1951. In our order delivered today in W. P. No. 3623/2007 and in W. P. No. 10326/2007 we have also found that the Registrar did not have any power under the Act of 1951 to review its earlier order and the remedy of the interveners was to file a civil suit but the interveners have not filed the civil suit. By the separate order delivered in W. P. No. 3623/2007 and W. P. No. 10326/2007, we have also quashed the order dated 13-2-2007 passed by the Registrar, Public Trust, Damoh

in Revenue Case No. 3-B/I 13(1)/2002-2003. The result is that the disputes raised by the interveners (Ajay Masih and S. K. Das) with regard to non-registration of the church as a Trust under the M. P. Public Trusts Act, 1951 and the Church properties as Trust properties no longer survive.

We further find that the Collector by order dated 10-7-2006 has renewed the lease over an area of 1.32 acres in Plot No. 86/2 in favour of the Disciples of Christ Church, Damoh and the Damoh Municipality has already given permission in favour of the Disciples of Christ Church, Damoh to construct the church and has also sanctioned the plan for construction of the church. The only snag for construction of church is non-grant of permission for construction of church by the Collector, Damoh. The Collector, Damoh has no powers under any Act to grant or withdraw permission for construction of a building in a municipal area and the power is that of the Municipal Council u/s 187 of the Municipalities Act, 1961. It however appears that by the orders passed in W. P. No. 2333/2005 and M.C.C. No. 2632/2005 a learned Single Judge of this Court conferred a jurisdiction on the Collector, Damoh to permit construction or not to permit construction of the church on the land in question. We further find that the Collector is sitting over the matter and for considerations which are not relevant withholding permission for construction of Church. Therefore, to prevent miscarriage of justice, we recall the earlier orders passed by the learned Single Judge in W. P. No. 2333/2005 and M.C.C. No. 2632/2005 directing the Collector to permit or not to permit construction of the Church.

In *Shivdeo Singh and Others Vs. State of Punjab and Others*, , a writ petition was first filed by a party for cancellation of the order of allotment in favour of another party and the High Court cancelled the order in favour of the other party though it was not party in the writ petition. Subsequently the party in whose favour the allotment had been made filed an another writ petition under Article 226 of the Constitution and the High Court reviewed its order passed in the first writ petition, and the Supreme Court held that the second writ petition was maintainable and the High Court has not acted beyond jurisdiction. The Supreme Court further observed :

It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

Church is a place of public worship where the persons having Christian faith perform their prayers, ritual, ceremonies for marriage, and other discourses and religious functions. Article 26 guarantees to a religious denomination the right to acquire movable and immovable property. It is an admitted position that there existed an old Church which was in a dilapidated condition and was demolished in February-March 2005. In its place construction of new Church building has been started, after due sanction from the Municipality. The question whether it is in accordance with the sanctioned plan or not is a matter to be examined by

Municipality. The Church is a place of worship and is required badly by Christian community of the area since there does not exist any Church building in Damoh District. The group of persons in whose favour the permission to build was granted have to be allowed to construct the Church. Admittedly, ICCDC is in possession of Church building and has started construction of the new building of the Church, and should be allowed to complete the construction of the Church. The interveners or the State should not be allowed to interfere with the right guaranteed to a religious denomination to construct its place of worship on a land leased out to the religious denomination. In the absence of a Church, all the necessary rituals and religious functions which are carried out in Church cannot be carried out. Thus, the High Court exercising powers under Article 226 of the Constitution to enforce the rights guaranteed under Article 26 of the Constitution must pass orders keeping in view the right of local Christian community of Damoh District guaranteed under Article 26 of the Constitution.

Thus we direct that construction of the Church over an area of 1.30 acres of Plot No. 86/2 on the basis of permission granted by the Municipal Council, Damoh shall go on and respondent No. 3 i.e. Collector, Damoh or any other Officer of the Administration or the Police will not restrain them from constructing the Church in accordance with the permission/sanction granted by the Municipal Council, Damoh.

With the aforesaid directions, writ petition is allowed and disposed of. No costs.