

(2014) 11 RAJ CK 0127

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 11357/2013

Shanker Lal Harsh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Constitution of India, 1950 — Article 26

Citation : (2014) 11 RAJ CK 0127

Hon'ble Judges : Prakash Gupta, J; Govind Mathur, J

Bench : Division Bench

Advocate : J.L. Purohit, Senior Advocate assisted by Shashank Joshi, Advocate for the Appellant

Judgement

Govind Mathur, J.—By claiming themselves as devotees of Shri Laleshwar Mahadev Temple, the petitioners practicing advocates at Bikaner have preferred this petition for writ said to be in public interest to get the notification dated 27.4.1981 notified by the Department of Devasthan quashed. The Department of Devasthan by the notification aforesaid published a list of the temples directly under its charge, management and control.

2. Briefly stated, facts of the case are that the temple of Laleshwar Mahadev, Shivbari, Bikaner was established on Vaishakh Shukla Dashmi, Vikram Samvat 1937 by the former State of Bikaner. To have proper management, administrative and religious, former State of Bikaner appointed a "Mahant". The temple was also declared entitled to collect revenue from two villages for its maintenance. As per the petitioners, even after merger of the former State of Bikaner with the State of Rajasthan on 30.3.1949, the Government of Rajasthan extended aid to the temple in the form of compensation. It is also pointed out that lacks of people are having immense faith in the seat of "Mahant", who as a matter of fact leads a "Math", that is a legal person having status akin to idol of a temple. "Mahant" is its caretaker with a right of perpetual succession and is spiritual head.

3. Shri Samvit Somgiriji is present "Mahant" of the temple succeeding Rajguru Mahant Swami Shri Premanand Puriji Maharaj. Shri Somgiriji Maharaj was managing the affairs of the "Math" as per its need, but the Department of Devasthan by its notification dated 27.4.1981 has included the temple in the category of its care/charge with an intention to divest powers of the "Mahant" to manage affairs of the temple. According to the petitioners, the Department of Devasthan has taken the "Math" property under its direct charge without any authority and even without making any inquiry about its historical background.

4. It is asserted that under Article 26 of the Constitution of India every religious denomination or any section thereof is having a fundamental right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law, but the Commissioner, Devasthan vide the notification dated 27.4.1981 has taken over "Math" in utter violation of this fundamental right.

5. On asking about locus of the petitioners, it is stated that they are devotees of Shri Laleshwar Mahadev Temple, therefore, are having all rights to agitate the issues causing injury to their fundamental right enshrined under Article 26 of the Constitution of India. To substantiate the contention learned counsel for the petitioners placed reliance upon the judgment of Hon"ble Supreme Court in the case of Dr. Subramanian Swamy Vs. State of Tamil Nadu and Others, . Reliance is also placed upon the law laid down by Hon"ble the Apex Court relating to maintain a public interest litigation in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, .

6. It shall be appropriate to mention here that in the instant matter in the year 1981 Shri Premanand Puriji Maharaj was "Mahant" of the "Math" (reference available in para 3 of the document Anx. 23) and Shri Somgiriji Maharaj was appointed as "Mahant" vide order dated 24.2.1995. Neither Premanand Puriji nor Somgiriji ever choose to challenge the notification dated 27.4.1981. They are discharging their duties as "Mahant" of the sect irrespective of the notification dated 27.4.1981. The petitioners in entire petition for writ have nowhere stated that as to how any injury is caused to their faith, belief and devotion for Shri Laleshwar Mahadev Temple on treating the temple as a State managed and controlled temple, specially in the circumstance that "Mahant" of the same sect has accepted this status. Suffice to notice that as per document Anx. 22 (relevant portion at page 123 of the paper book) the temple as a matter of fact even prior to 1981 was a government temple and by notification dated 27.4.1981 it was only a list of government managed and controlled temples was published. The details given in this regard by the Department of Devasthan in the document aforesaid reads as under:-

7. Looking to the contents of the document aforesaid, we are having all doubts about involvement of public interest in the instant matter.

8. So far as the judgment of Hon"ble Supreme Court in the case of Dr. Subramanian Swamy (supra) is concerned, i.e. having no relevance in the instant matter. The judgment aforesaid nowhere discusses the issue of locus-standi of Dr. Subramanian Swamy. As a matter of fact in the case aforesaid he was permitted to join writ proceedings which were lodged at the instance of Shri Sabayangar Temple. Pertinent to mention here that Shri Sabayangar Temple was administered by Podhu Dikshitars. The State of Madras enacted the Madras Hindu Religious and Charitable Endowments Act, 1927 which was repealed in the year 1951 enabling the Government to promulgate the scheme for the management of the temple. In pursuance to the same the Hindu Religious Endowments Board, Madras appointed an Executive Officer for the management of the temple vide order dated 28.8.1951. A challenge was given to the same before the Madras High Court, which came to be accepted by the judgment dated 13.12.1951 by holding that Podhu Dikshitars constitute a religious denomination and their position vis-a-vis the temple was analogous to "Mathadhipati" of a "Math", as such appointment of Chief Executive Officer under the order dated 28.8.1951 was violative of the provisions of Article 26 of the Constitution of India. An appeal giving challenge to the judgment dated 13.12.1951 also came to be dismissed on 9.2.1954. Irrespective of the judgment aforesaid, on 13.7.1987 the Commissioner of Religious Endowments passed an order appointing Administrator of the temple. The order aforesaid was challenged before the High Court of Madras by way of filing a petition for writ. The writ petition was dismissed being preferred without exhausting the statutory remedy available. A revision petition then was preferred before the authority competent which came to be rejected on 9.5.2006. The order passed in the revision petition was subject matter of a petition for writ with contention that the order dated 5.8.1987 is bad in light of the earlier judgment of Hon"ble High Court given on 13.12.1951. The submission was that the judgment aforesaid operate as res-judicata. During pendency of the writ petition Hon"ble Madras High Court permitted Dr. Subramanian Swamy to join writ proceedings as a party. The issue involved in the writ petition though was further taken up by Dr. Subramanian Swamy and also by Sabayangar Temple, but the judgment of Hon"ble Supreme Court nowhere discusses the issue relating to locus of Dr. Subramanian Swamy. As such, the judgment relied upon is of no assistance for the petitioners. However, an important aspect of the matter is that in the case of Dr. Subramanian Swamy (supra) it was the position admitted that much back in the year 1951 all the "Podhu Dikshitars" were declared as "Mathadhipati". The petitioners have not come forward in the instant matter for having any such right.

9. The other judgment relied upon by learned counsel for the petitioners i.e. State of Uttaranchal v. Balwant Singh Chauhal & Ors. (supra) is also not extending any help to the petitioners. The judgment aforesaid discusses the concept of public interest litigation and also provides cautions to be taken while entertaining a petition for writ in public interest. As a matter of fact learned counsel for the appellant utterly failed to satisfy us that on what basis he want to

taken assistance of the law laid down by the Hon''ble Supreme Court in the case aforesaid for maintaining the instant matter. In our opinion, the petitioners utterly failed to establish their locus to maintain this petition for writ in public interest.

10. Learned counsel for the petitioners has also relied upon the judgment of Hon''ble Apex Court in the case of Dr. Subramanian Swamy (supra) to assail the notification dated 27.4.1981 on the count of violation of a valuable fundamental right enshrined under Article 26 of the Constitution of India. We are not at all impressed with the argument advanced. In the case of Dr. Subramanian Swamy (supra) Hon''ble the Supreme Court noticed that much back in the year 1951 Hon''ble Madras High Court arrived at the conclusion that Dikshitars constitute a religious denomination and are having a right to participate in administration of the temple. No such declaration at all is available to the petitioners or even to the "Mahant" of Shri Laleshwar Mahadev Temple. Beside the above, the judgment concerned mainly deals with the issue relating to operation of the doctrine of res-judicata in view of the earlier judgments of Madras High Court.

11. For the reasons given above, the writ petition is dismissed.