
(1969) 04 SC CK 0029
In the Supreme Court Of India
Case No : Civil Appeal No. 550 of 1966

State of M.P.	Vs	APPELLANT
Mahant Kamal Puri		RESPONDENT

Date of Decision : 17-04-1969

Acts Referred:

Gwalior State Places of worship and Religious Endowments Aid and Administration Act, 1930 — Section 30

Citation : (1970) MPLJ 114 : (1969) 2 UJ 390

Hon'ble Judges : M. B. Shah, J;G. K. Mitter, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shah, J.—At Mauza Basaiya, "District Morana, there is shrine of "Basaiya Mata" which was founded by Mahant Rajpur sometime in the year 1949. After the death of Mahant Rajpuri his disciple Kundan Puri succeeded as the Mahant. Kundan Puri died in 1919 he was succeeded by his disciple Tejpuri. The shrine in course of time acquired considerable reputation and large offerings and endowments were made, and by the year 1920 the shrine was possessed of considerable property moveable as well as immovable.

2. After the death of Mahant Rajpuri, one Ramgovind Mishar asserted his title to the shrine and claimed it as his private-property. Ramgovind Mishar filed a number of complaints against Tejpuri, and obstructed the management of the properties of the shrine and the worship. On July 1, 1930, Tejpuri requested the State Government of Gwalior to take over the management of the shrine under its supervision. Complaints were also received by the Government of Gwalior from members of the public about mismanagement of the shrine properties. On December 6, 1932 an order was issued that the administration of the shrine be taken over and a special committee u/s 30 of the Gwalior State Places of Worship and Religious Endowments Aid and Administration Act, 1930, be appointed and that a report "showing the effect of taking over the administration of the temple

be submitted after two years".

3. On August 10, 1929, the Commissioner of Jagir-Inam submitted a report that due to quarrels between the Mahant and his disciples and Ramgovind Mishar the income of the shrine was being frittered, that the Mahant and his disciples had caused considerable damage to the reputation of the shrine, that their "personal character was not trustworthy" that the police record showed that they had connections with goondas and they sold rifles to dacoits that out of the considerable offerings received in the shrine a small amount only had been deposited, and that it was expedient to manage the shrine under the control of the Waqf Department till the relations between the Mahant and the pujaris "take a turn for the better and till the decisions of the suits" The Maharaja by his order dated August 10, 1939, accepted the report of the Commissioner, and ordered that the management of the shrine be taken over by the Waqf Department of the Government of Gwalior State.

4. After the territory of the State of Gwalior became a part of the State of Madhya Bharat, Tejpuri applied to the State Government that disputes between the parties had ended and that possession of the shrine be restored to him. By letter dated October 5, 1950, the Madhya Bharat Government intimated that "Basaiya Mata" shrine was a public shrine and the question of entrusting the management of the shrine to Mahant Tejpuri did not arise at all. Tejpuri then filed a suit for declaration of his rights to the shrine and for an order directing the State Government to withdraw its control over the administration of the shrine and to restore the management of the shrine to him. During the pendency of the suit, Tejpuri died and he was succeeded by his disciple Kamalpuri, respondent in this appeal.

5. The suit was resisted by the State of Madhya Bharat, inter alia on the grounds that the management of the shrine was taken over u/s 30 of the Gwalior Act and after considering the recommendation of the Home Member of the then Gwalior State, that the Government was under no obligation to restore management of the shrine to Tejpuri, that the right of Mahantship was not hereditary, that Mahant Tejpuri had no right to sue, and that since the shrine was a public shrine it was just that the shrine should be administered through the Government.

6. The learned Trial Judge rejected the contentions raised on behalf of the State of Madhya Bharat and held that Tejpuri was entitled to the management of the shrine and to the perquisites attached thereto. The Court accordingly directed that the State of Madhya Bharat be restrained from interfering with the management of the properties of the shrine and its properties be restored to the Mahant and also to render accounts from 1950 till the date of the preliminary decree.

7. An appeal preferred against that decree to the High Court of Madhya Bharat was heard before Abdul Hakim Khan and Shivdayal JJ. The learned Judges differed, The case was referred to R.L. Pandey, J: the learned Judge held,

agreeing with Shiv dayal, J., that the ownership of the shrine and its properties remained vested, as before, in the person in whom they vested, and only the administration of the shrine and its properties had been taken over u/s 30 of the Gwalior Act and that the Mahant for the time being was entitled to administer the properties of the shrine. The learned Judge further held that the order dated August 10, 1939, was passed in relation to a matter which was the subject matter of an earlier order u/s 30 of the Gwalior Act and it was on that account administrative in character. He further held that the decision of the Gwalior Government to take over the administration of the shrine being administrative in character, the title of the Mahant could not be extinguished and that the order in terms indicated that the administration was to continue to remain under the control of the Government until the position improved in certain respects. There was therefore nothing in the order which prevented Tejpuri from obtaining a decree for restoration of possession of the shrine and its assets. With special leave, this appeal has been filed by the State of Madhya Pradesh.

8. Counsel for the State urged that the orders made in the years 1932 and 1939 were legislative acts of a sovereign who exercised absolute authority and the effect of the orders was to extinguish the title of Tejpuri to the management of the properties of the shrine and that in any event, unless the conditions prescribed in the order dated August 10, 1939 were fulfilled Tejpuri could not get a decree for possession. But Tejpuri had merely sought protection of the Government of the Gwalior State and had requested the Government to take over the management of the shrine. It was in pursuance of this request that the management of the shrine was taken over by the State Government. By the order dated December 6, 1932, management of the shrine was taken over and there is nothing in the order which purports to extinguish the title of Tejpuri. The recommendation made by the Commissioner Jagir-Inam recited, after setting out different acts of mismanagement :

"Therefore it would be proper of this temple still remaining under the control of the Waqf Department till the relations between the Mahant and the Pujaris take a turn for the better and till the decisions of the suits."

and this recommendation was approved by the Maharaja Scindia of Gwalior. The second order dated August 10, 1930, was also executive in character.

9. There is nothing in the orders to support the contention that they were intended to be in exercise of the legislative will of the sovereign or that by the orders the title of Tejpuri as shebait was intended to be extinguished. The Maharaja Scindia of Gwalior was undoubtedly an absolute ruler, and he could, if he so desired, have extinguished the title of the Mahant and taken over the properties for the use of the State. But he made no such order. The orders were merely for taking over the management of the shrine for temporary purposes till the disputes relating to the Mahantship and the claims made as to private character of the shrine were disposed of.

10. The argument that the conditions prescribed in the executive order made on August 10, 1939 were not fulfilled, and the claim of the Mahant is on that account not maintainable, is equally without substance. If the Mahant is entitled to manage the properties, the State, after the enactment of the Constitution, has no competence to withhold the management, except under authority of law, and no such authority for retaining possession and management of the shrine and its properties is pretended.

11. Section 30 of the Gwalior Act on which reliance was placed before the High Court roughly translated from the original reads as follows :

"If it is thought proper for the supervision and management of any beneficiary or religious Waqf which is famous historically or is ancient or for any other special reason, the Government is empowered to appoint a special committee or to pass such order that the same be taken under Government management."

The section undoubtedly authorises, in certain eventualities, the Government to take over the management. But there is no provision in the Act which, after the enactment to the Constitution, authorises the State Government to retain possession of the properties contrary to the claims of the lawful Mahant. It is true that the Act contains no provision for releasing the property under Government management and returning it to the person from whom it was taken. Absence of such a provision in the statute does not, since the enactment of the Constitution, debar the owner from claiming possession of his property. If the title of the Mahant to the management of the shrine and its properties remains outstanding, that can only be defeated in pursuance of an order made in exercise of lawful authority conferred by statute.

12. The contention that the suit was barred by adverse possession is without substance. The Government of the State of Gwalior did not purport to claim adverse interest against the Mahant; it only took over the properties for management. Thereby the State of Madhya Bharat laid no claim adversely to the right of the Mahant.

In the circumstances of the case, this appeal fails and is dismissed with costs.