
(2019) 12 RAJ CK 0112

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1216 Of 2019

State of Rajasthan And Ors

APPELLANT

Vs

Abdul Hameed And Ors

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Citation : (2019) 12 RAJ CK 0112

Hon'ble Judges : Sangeet Lodha, J;Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Manish Vyas, Kailash Choudhary, Vikas Balia, Hemant Balani

Final Decision : Dismissed

Judgement

Sangeet Lodha, J

1. This intra court appeal is directed against judgment dated 8.7.19 passed by the learned Single Judge of this court, whereby the writ petition preferred by the respondents has been allowed and it is declared that order dated 15.9.08 (Annex.6) issued by the Assistant Commissioner, Department of Devasthan, Government of Rajasthan, pursuant to interim order dated 8.9.08 passed by the learned Single Judge in S.B.C.Writ Petition No.6836/08 has come to an end with the dismissal of the writ petition by the Court on 16.4.13.

2. The facts relevant are that an ancient temple of folk deity Veer Gogaji is located at Village Gogamedi, Tehsil Nohar, District Hanumangarh, which celebrates a fair (Mela) during the period ranging from "Shrawan Sudi Punam to Bhadwa Sudi Punam" for a month in each year, wherein numerous followers and disciples visit the temple. As per the practice prevailing, all the offerings offered by the disciples during the said period were being claimed and taken by the erstwhile Bikaner State and thereafter, the re-organized State of Rajasthan. However, for the rest 11 months, the Chayal Pujaries performing the worship at the shrine, have right over the offerings offered by the followers and disciples of the Gogaji Peer.

3. An inter-se dispute arose between Chayal Muslim Pujaries which led to filing of a suit before the Court of Civil Judge (Junior Division), Nohar wherein initially the Receiver was appointed for collecting and preserving the offerings offered by followers and disciples of Shri Gogaji at Gogadev Temple, Gogamedi, however, the dispute was finally settled and accordingly, directions were given to the Receiver to hand over the administration of worship back to Chayal Pujaries so also to hand over the entire offerings received by Department of Devasthan and preserved in the bank account back to Chayal Pujaries. An appeal preferred against the judgment dated 18.12.98 passed by the trial Court also failed. Pursuant to the judgment and decree dated 18.12.98 passed by the trial Court, affirmed by the Appellate Court, the Assistant Commissioner, Devasthan Department, Bikaner passed an order directing the Receiver to comply with the directions.

4. A dispute having been arisen, the Brahmin Pujaries filed a suit before the Munsif Court, Nohar with regard to two worship points i.e. Naharsinghji Ka Chirag and Naharsinghji Ka Kund, claiming that the Brahmin Pujaries have right to worship at the said worship points during the period of fair. The said suit was decreed by way of compromise on 25.3.80. The compromise decree reads as under:

"यह मुकदमा आज वास्ते इनफिसाल कतई रूबरू हमारे वहाजरी श्री राधेष्णाम एडवोकेट मिनजानिब मुदई व श्री संतलाल व श्री सुखदेव एडवोकेटस मिनजानिब मुदायलह पेश होकर हुकम दिया जाता है व बरूवे राजीनामा डिगरी दी जाती है कि वादीगण श्री गोगाजी के मंदिर के पुजारी हैं व वे नाहरसिंह जी की चिराग व कुंड दोनों का हमेशा से चढ़ावा लेते आ रहे हैं उसके पुष्टैनी हकदार हैं इनके चढ़ावा मे हमारी कोई आपत्ति नहीं है। वादीगण उक्त चढ़ावा पुनम से पुनम तक लेते रहेगे व हम प्रतिवादीगण उक्त चढ़ावा मे कोई दखलन्दाजी नहीं करेगे। चिराग मे जो रूपया पैसा प्रषाद वगैरा चढ़ावा मे आए उसे वादीगण लेवे। अगर कपड़ा नारियल समाधि पर चढ़ावा जाए तो उसे वादीगण नहीं लेगे। यदि उक्त कपड़ा नारियल वादीगण को देवे तो वे ले सकते हैं। मिसल बाद तकमील जाब्ता दाखिल दफतर हो।"

5. In the year 2008, one Pandit Shyamlal filed a writ petition being S.B.C.Writ Petition No.6836/18 before this Court claiming hereditary right of worship at two particular points in the said temple premises namely, Narharsingh Ka Kund and Naharsingh Ka Chirag on the strength of decree dated 25.3.80 passed as aforesaid, by the Munsif Court, Nohar. On 8.9.08, the learned Single Judge of this Court while issuing notices to the respondents, passed an interim order in favour of the petitioner in the following terms:

"In the meanwhile, the administration of Gogadev ji's temple shall remain with Devasthan Vibhag. However, the petitioner and respondents Nos. 8 to 32 shall be allowed to do 'seva-puja' at the temple in question and they shall also abide by the terms and conditions of decree dated 25.3.1980 passed by Munsif Court, Nohar."

6. Pursuant to the interim order passed by the Court as aforesaid, the Assistant Commissioner issued an order dated 15.9.08, which reads as under:

"माननीय उच्च न्यायालय द्वारा एस.बी. सिविल रिट पिटीषन संख्या 6836/2008 मे दिनांक 8 सितम्बर 2008 को दिए

गए आदेश के अनुसार मन्दिर श्री गोगाजी गोगामेड़ी का समस्त प्रशासन न्यायालय के अग्रिम आदेशों तक देवस्थान विभाग द्वारा किया जायेगा। माननीय उच्च न्यायालय के आदेश की फोटो प्रति संलग्न है।

सहायक आयुक्त,

देवस्थान विभाग,

बीकानेर कैम्प - गोगामेड़ी"

7. As noticed above, in the writ petition filed, Pandit Shyamlal had claimed the right of worship on two worship points i.e. Naharsinghji Ka Kund and Naharsinghji Ka Chirag and never claimed any right to worship at shrine (Samadhi) of Shri Gogaji.

However, the Department of Devasthan proceeded to take over the administration of shrine of Shri Gogaji and Galla put before the shrine as well, which were not subject matter of the said writ petition. Be that as it may, the writ petition preferred by Pandit Shyamlal was ultimately dismissed by the learned Single Judge, after due consideration on merits vide judgment dated 16.4.13.

8. Despite interim order passed by the learned Single Judge in Writ Petition No.6838/08 having come to an end, with the dismissal of the writ petition vide order dated 16.4.13, the right of Chayal Pujaries to receive all kinds of offerings offered by the followers and disciples of Shri Gogaji in the Galla put before the shrine of Shri Gogaji was not restored by the Department of Devasthan. In these circumstances, the respondents preferred the writ petition before this court with the following prayers:

"(i) The orders impugned dated 15.09.2008 (Annexure-6) passed by the respondent no.3, may be declared illegal and be quashed and set aside and same may kindly be declared ineffective;

(ii) The right of the petitioners i.e. Chayal Pujaries to receive all kind of offerings offered by the followers and disciples of Shri Goga Ji in the Galla put before the shrine of Sh. Goga Ji may kindly be restored and the petitioners may kindly be permitted to receive all kind of offerings offered by the followers and disciples of Shri Goga Ji in the Galla put before the shrine of Sh. Goga Ji for 11 months as per the prevailing practice.

(iii) The position/status of the worship as well as the right to receive the offerings in the Galla put before the shrine of Sh. Goga Ji as existed prior to the order dated 15.09.2008 may kindly be restored back.

(iv) The respondents may kindly be directed to hand over all the amount of offerings received and kept preserved by the Devasthan Department offered by the followers and disciples of Shri Goga Ji in the Galla put before the shrine of Sh. Goga Ji for the period of 11 months of each year since 15.09.2008 uptill the of handing over the charge of the Galla put before the shrine of Sh. Goga Ji back

to the petitioners;

(v) The respondent Devasthan Department may kindly be restrained from interfering or obstructing the right of the Chayal Pujaries to worship as well as to receive all kind of offerings made by the followers and disciples in the Galla put before the shrine of Sh. Goga Ji for 11 months of the year and the respondents may, further, be directed to maintain the prevailing practice in its true letter and spirit;

(vi) Any other relief which this Hon'ble Court deems just and proper in favour of the petitioners, may kindly be granted and

(vii) The cost of the writ petition be allowed in favour of the petitioners."

9. The writ petition preferred by the respondents has been allowed by the learned Single Judge by the order impugned holding that order dated 15.9.08 passed in furtherance of interim order dated 8.9.08 in S.B.C.Writ Petition No.6836/08 has lost its existence or sanctity after dismissal of the writ petition vide order dated 16.4.13. Accordingly, the appellants have been directed to do the needful, treating impugned order dated 15.9.08 to have ceased on 16.4.13. Hence, this appeal.

10. Learned Additional Advocate General appearing for the State submitted that the temple of Gogaji is self funded Government temple which is directly controlled and managed by the Department of Devasthan and thus, the respondents have no right over the offerings offered by the followers and disciples of deity Gogaji. Learned AAG submitted that while passing the order impugned, the learned Single Judge has ignored the notification dated 25.6.81 issued by the State Government declaring temple of Gogaji as Government self supported temple and thus, the order impugned passed is ex facie erroneous. Learned AAG submitted that the stand of the State regarding the temple and offerings offered by the followers and disciples has not even been taken note of by the learned Single Judge, which has resulted in an erroneous finding being arrived at.

11. On the other hand, Mr. Vikas Balia, learned counsel appearing for the respondents contended that indisputably, the order dated 15.9.08 was issued by the Department of Devasthan, taking over administration of temple of Gogaji in compliance of interim order dated 8.9.08 passed by the learned Single Judge in Writ Petition No.6836/08 and therefore, after the dismissal of the writ petition vide order dated 16.4.13, the interim order passed having come to an end, the said order dated 15.9.08 also does not survive and the Department of Devasthan was under an obligation to restore the position existing as on the date of passing of the order dated 15.9.08 in terms of the compromise decree dated 25.3.80 passed by the civil Court of competent jurisdiction. Learned counsel submitted that the attempt sought to be made by the appellants to raise a dispute which was never in existence, is misplaced. Learned counsel submitted that as a matter of fact, the right of the Chayal Pujaries of sewa puja and receive the offerings

offered by the followers and disciples is never disputed by the State rather, the same is always supported by the State and thus, the dispute sought to be raised by the respondents is absolutely mala fide. Learned counsel submitted that the contention sought to be raised on behalf of the State that the temple in question is State temple by virtue of the notification issued, has also been already settled by a decision of this Court dated 25.7.02 rendered in S.B.C.Writ Petition No.467/87 "Mahant Tulsidas vs. State & Anr."

12. We have considered the rival submissions and perused the material on record.

13. Indisputably, prior to issuance of order dated 15.9.08 issued by the Assistant Commissioner, Devasthan, Bikaner, pursuant to interim order dated 8.9.08 passed by learned Single Judge of this Court in S.B.C.Writ Petition No.6836/08, sewa puja at all the worship points in the temple of Gogaji were being performed and offerings were being collected by hereditary pujaries i.e. Chayal Pujaries. Apart from, Chayal Pujaries, Brahmin Pujaries were also performing sewa puja and collecting offerings from two points i.e. Narsingh Pandey Jyoti and Narsingh Pandey Kund as per the age old custom during a month in each year i.e. the period ranging from "Shrawan Sudi Punam to Bhadwa Sudi Punam". In this regard, a categorical stand taken on behalf of the State before the learned Single Judge by way of an additional affidavit is self explanatory, the relevant paras whereof read as under:

"3. That Gogaji temple, Gogameri has about ten worship points such as "Samadhi of Gogaji Maharaj (Sanctum Sanctorum)", "Narsingh Pandey Ki Jyoti", "Akhand Jyoti famously known as Chayalon Ka Chirag", Thaan of Narsingh Pandey", Narsingh Pandey Kund", Bhajju Kotwan Thaan", "Mata Sariyal Jal", "Samadhi of Mata Bachchhal", "Kalash atop the temple" and "Nagara in front of temple".

4. The Principal hereditary Pujaries in the temple of Gogaji are Chayals by descent since the State time who perform Seva Puja and collect offerings from all the worship points as described above. Apart from the Chayal Pujaries, Brahmin Pujaries also perform Seva Puja and collect the offerings from "Narsingh Pandey Jyoti" and "Narsingh Pandey Kund" and Khati Pujaries also receive the offerings of "Kalash atop the temple" as per the age old custom. Apart from the custom the rights of the Devasthan Department and different Pujari communities to collect offerings from amongst worship points have been governed by orders and decree passed by the learned Civil Courts also.

5. That a customary fare takes place at Gogaji Maharaj temple very year in the month of Bhadwa. The fare starts on the Purnima of Shrawan (the last day of the month of Shrawan) and continues till the Purnima of Bhadwa (the last day of the month of Bhadwa) i.e. from the Poonam Till Poonam. During this period Brahmin Pujaries perform Seva Puja at "Narsingh Ji Ka Chirag and Narsingh Ji Ka Kund" and collects the offerings and for this purpose they take charge of these worship points from Chayal Pujaries according to tradition and decree by mutual

understanding. As per the age old custom, during this very month of customary fare, Devasthan Department takes charge of the "Bhent Galla" situated in front of the Samadhi of Gogaji Maharaj (Sanctum Sanctorum) from the hereditary Chayal Pujaries."

14. It is pertinent to note that during the pendency of the suit No.265/96 before the Civil Judge (Junior Division), Nohar, the Assistant Commissioner, Department of Devasthan, Bikaner was appointed as Receiver of the temple and was authorized to collect the offerings at the different points of worship and deposit the same in the nationalized bank. Later, when the appeal being No. 2/99, preferred against the judgment and decree dated 18.12.98 passed by the Civil Judge (Junior Division), Nohar in Civil Suit No.265/96 was decided by the Additional District Judge, Nohar and the order of appointment of the Receiver had come to an end, the possession of all the worship points was handed over to the Chayal Pujaries with the directions to share the offerings as per the decree passed by the Court.

15. Suffice it to say that the possession of the temple was taken over by the State vide order dated 15.9.08 only on account of the interim order dated 8.9.08 passed by the learned Single Judge of this Court in Writ Petition No.6836/08 and thus, after dismissal of the writ petition, the interim order having come to an end, the question of the Assistant Commissioner, Devasthan retaining the possession of the worship points, does not arise. After the dismissal of the writ petition, the interim order having come to an end, the order dated 15.9.08 also does not survive and thus, the learned Single Judge has committed no error in declaring that the order dated 15.9.08 has come to an end on 16.4.13. Obviously, after dismissal of the writ petition, the appellants were under an obligation to take the appropriate steps to restore the position as it was existing prior to the issuance of the order dated 15.9.08.

16. Coming to the contention of the learned counsel for the appellants regarding the temple in question being State temple, indisputably, while considering the said issue this Court in S.B.C.Writ Petition No.267/87, decided by judgment dated 25.7.02, categorically held that the notification issued by the State is not conclusive proof of the fact that the temple in question is State temple but can only be taken to be the claim by the State as State temple; whether owned by it or managed by it or supervised by it through Department of Devasthan, but any objection to that has to be adjudicated in the manner known to law. Be that as it may, the State having recognized the rights of the Chayal Pujaries and Brahmin Pujaries to perform sewa puja and collect the offerings as per the age old custom, it cannot be permitted to deny the same to them by enlarging the scope of the dispute raised while retracting from its categorical and consistent stand noticed as above.

17. In view of the discussion above, we are in full agreement with the view taken by the learned Single Judge of this Court.

18. No case for interference by us in exercise of intra court appeal jurisdiction is made out.

19. The special appeal is therefore, dismissed. No order as to costs.