

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CIVIL) NO. 31797 of 2010

Raja Khan .. Petitioner

versus

U.P. Sunni Central Waqf Board & Anr. .. Respondents

O R D E R

Heard learned counsel for the petitioner.

"Something is rotten in the State of Denmark", said Shakespeare in Hamlet, and it can similarly be said that something is rotten in the Allahabad High Court, as this case illustrates.

This petition has been filed against the impugned judgment passed by a division Bench of the High Court of Allahabad dated 5.8.2010 in Special Appeal No. 973 of 2010. By that judgment the ex-parte interim orders of the Single Judge of the High Court dated 11.6.2010 and 18.6.2010 passed in Writ Petition No. 34595/2010 have been set aside.

The brief facts of the case are that there is a Dargah known as 'Dargah Hazrat Syed Salar Masood Ghazi R.A.' in district Bahraich, U.P. which is managed by the Committee of Management of Waqf no.19.

The petitioner claims to be the proprietor of circuses e.g. Great Gemini Circus, Apollo Circus, Raj Mahal Circus and Asiad Circus, and also runs a Jhoola (cradle) for entertaining the public at large. The petitioner does touring and runs the aforesaid circuses and jhoola in 'Melas' and other places of public gathering.

In the aforesaid dargah a Mela is held in the month of Jeth, known as 'Jeth Mela', Bahraich for a period of 40 days. It is alleged by the petitioner that in the past several years the Waqf has been allotting plot nos.1760 to 1770 and 1826 to 1834 belonging to it on lease to the petitioner for holding the Jeth Mela. However, in 2010 the Waqf refused to allot the said land for Jeth Mela to the petitioner. Hence the petitioner twice filed writ petitions in the Lucknow Bench of the Allahabad High Court which were dismissed. It may be mentioned that Bahraich is a district in erstwhile Avadh, which is under the jurisdiction of the Lucknow Bench of the High Court.

The petitioner then filed a suit in district Hamirpur being Suit no.54/70/10 of 2010 and when an objection was raised about territorial jurisdiction he filed the writ petition being Writ Petition no.34595 of 2010 in the Allahabad Bench of the High Court on which the ex-parte interim orders dated 11.6.2010 and 18.6.2010 were passed by the Single Judge of the Allahabad Bench of the High Court.

The order of the single Judge dated 11.6.2010 reads as follows :

"Issue notice to respondent Nos. 2, 3 and 4.

The said respondents are directed to file counter affidavit within 6 weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter. List thereafter.

The grievance of the petitioner is that for the last several years the petitioner is allotted land for installing Circus, Jhoola, Merry go round, swing for amusement area for the children and visitors of Mela in the premises of Dargah Sharif during the annual Urs in the month of Jeth (May and June).

Accordingly the respondent Nos. 2, 3 and 4 are directed to allot land in the Mela at waqf No. 19, Dargah Sharif, Bahraich over Plot Nos. 1760 to 1770 and 1826 to 1884, details of which have been given in the writ petition, to the petitioner for the purpose of running Circus, Jhoola, Merry go round swing etc. If the petitioner pays required rent lease, the possession of the allocated land shall be handed over the petitioner within 3 days.

Order Date:- 11.06.2010".

The order dated 18.6.2010 reads as follows :

"Heard learned counsel for the petitioner and the learned standing counsel.

Learned counsel for the petitioner has raised the grievance that despite earlier order of this Court dated 11.6.2010, the petitioner has not been allotted land in the Mela area. The very purpose of filing the writ petition would be frustrated if the petitioner is not allotted the land for running circus/Jhula in the Meal area.

The District Magistrate and the Superintendent of Police, Bahraich are directed to pass appropriate order in compliance of the order of this court dated 11.6.2010, since the petitioner has not been allotted land in the Mela area. The very purpose of filing the writ petition would be frustrated if the petitioner is not allotted the land for running circus/Jhula in the Mela area.

The District Magistrate and the superintendent of Police, Bahraich are directed to pass appropriate order in compliance of the order of this court dated 11.6.2010 and allot appropriate plot to the petitioner and file affidavit of compliance.

Put up this case on 16.7.2010 before appropriate bench for hearing. The concerned officers or any other senior officer authorized by them shall file affidavit of compliance by 28.6.2010.

Order Date:- 18.6.2010".

The above orders are shocking to say the least.

We are of the opinion that the above two ex-parte interim orders of the Single Judge of the Allahabad High Court were clearly passed on extraneous considerations.

This is for the following reasons :

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(1)The property in question is in the district of Bahraich

which is within the territorial jurisdiction of the Lucknow Bench of the Allahabad High Court. Hence, the writ petition could not have been validly filed or entertained in the Allahabad Bench of the High Court in view of the decision of this court in Nasiruddin vs. State Transport Appellate Tribunal AIR 1976 SC 331.

(2)The writ petition was not maintainable because ordinarily no writ petition lies against a private body.

(3)By the ex-parte order dated 11.6.2010 the writ petition has been practically allowed since by that ex-parte order the respondents 2, 3,& 4 (U.P. Sunni Central Waqf Board, District Magistrate, Bahraich and Committee of Management, Waqf No. 19, Dargah Sharif, Bahraich) have been directed to allot the land in the Mela of the aforesaid Waqf at plot Nos. 1760 to 1770 and 1826 to 1884 to the petitioner for the purpose of running circus, Jhoola, Merry-go-round etc., and possession of the allocated land was directed to be handed over within three days. Subsequently, on 18.6.2010, the same single Judge has passed an order directing the district Magistrate and SP, Bahraich to take appropriate action for compliance of the earlier order.

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It is well settled that by an interim order the final

relief should not be granted, vide U.P. Junior Doctors Action Committee vs. Dr. B. Sheetal Nandwani, AIR 1992 SC 671 (para 8), State of U.P. vs. Ram Sukhi Devi, JT 2004(8) SC 264 (para6), etc.

(4) The petitioner had earlier filed a writ petition being writ petition No. 4720(M/B) of 2010 before the Lucknow Bench of the High Court which was dismissed on 19.5.2010 with liberty to approach the district Magistrate by making a representation. The petitioner made a representation which was decided by the District Magistrate on 21.5.2010 with the direction to the Committee of Management of the Waqf to reconsider the petitioner's claim for allotment of land. The petitioner then applied to the Committee of the Management for grant of a lease and simultaneously filed another writ petition being writ petition No. 5245(M/B) of 2010 before the Lucknow Bench challenging the order of the District Magistrate. This writ petition was dismissed on 28.5.2010 by the following order of the Division Bench of the Lucknow Bench of the Allahabad High Court :

"Court No. -1

Case:- MISC. BENCH No. - 5245 of 2010

Petitioner :- Raza Khan S/O Fateh Khan

Respondent :- District Magistrate / Additional
Waqf Commissioner, Bahraich

Petitioner Counsel:- M. A. Khan

Respondent Counsel:- C. S. C., M. Sayeed, U.K.
Srivastava

Hon'ble Pradeep Kant, J.

Hon'ble Ritu Raj Awasthi, J.

After hearing the argument at length, we are satisfied that this second writ petition for the same relief is not maintainable, as earlier, the writ petition filed by the petitioners for the same relief, has been dismissed as withdrawn vide order dated 19.5.2010.

Sri Umesh Kumar Srivastava appearing for the Committee says that in pursuance of the directives issued by the District Magistrate in his order dated 21.05.2010, a fresh decision has already been taken and it has been sent to the petitioner through registered post.

Mohd. Arif Khan, learned Senior Advocate, appearing for the petitioner says that no such decision has yet been communicated.

Copy of the said decision has been handed over to Sri Mohd. Arif Khan.

When this Court has refused to entertain the writ petition filed earlier for the same relief and though liberty to the petitioner to approach the District Magistrate or any other forum, as may be provided under law being even, it does not mean that the second writ petition seeking same relief will be maintainable after the orders passed by the authority concerned, but it would be open to the parties to seek their remedy, elsewhere, as may be provided under law.

The dispute like this nature, since cannot be adjudicated in writ jurisdiction, we did not entertain the earlier petition and for the same reason, the present petition is also not maintainable.

Mohd. Arif Khan, lastly submitted that a direction be issued to the Chairman for deciding the application moved under Section 70 of the Act. In response, Sri Umesh Kumar Srivastava, argued that Section 70 is not attracted in the matter, nor such an application is entertainable.

We do not intend to enter into this controversy, and leave it open to the petitioner, to pursue his application with the above observation, the writ petition is dismissed.

Order Date: 28.5.2010"

The petitioner then filed a Civil Suit being Suit No. 54/70/10 of 2010 titled 'Raza Khan vs. Managing Committee, Waqf No. 19, Waqf Dargah etc.' before the Civil Judge (Senior Division), Hamirpur. It may be mentioned that Hamirpur lies within the territorial jurisdiction of the Allahabad Bench of the High Court and not the Lucknow bench, whereas the property in question is situate at Bahraich which is under the jurisdiction of the Lucknow Bench.

On the suit being presented, the Munsarim made a report that the suit was not cognizable at Hamirpur for

lack of territorial jurisdiction. The petitioner took time to file a reply/objection against the said report. Instead of filing a reply, he filed a writ petition in the Allahabad bench of the High Court being writ petition No. 34595 of 2010 on which the orders dated 11.6.2010 and 18.6.2010 have been passed.

In our opinion, the Division Bench of the High Court has rightly set aside the interim orders of the Single Judge dated 11.6.2010 and 18.6.2010 as these interim orders were clearly passed on extraneous considerations.

The faith of the common man in the country is shaken to the core by such shocking and outrageous orders such as the kind which have been passed by the Single Judge.

We are sorry to say but a lot of complaints are coming against certain Judges of the Allahabad High Court relating to their integrity. Some Judges have their kith and kin practising in the same Court, and within a few years of starting practice the sons or relations of the Judge become multi-millionaires, have huge bank balances, luxurious cars, huge houses and are enjoying a luxurious life. This is a far cry from the days when the sons and other

relatives of Judges could derive no benefit from their relationship and had to struggle at the bar like any other lawyer.

We do not mean to say that all lawyers who have close relations as Judges of the High Court are misusing that relationship. Some are scrupulously taking care that no one should lift a finger on this account. However, others are shamelessly taking advantage of this relationship.

There are other serious complaints also against some Judges of the High Court.

The Allahabad High Court really needs some house cleaning (both Allahabad and Lucknow Bench), and we request Hon'ble the Chief Justice of the High Court to do the needful, even if he has to take some strong measures, including recommending transfers of the incorrigibles.

We entirely agree with the view taken by the Learned Division Bench in the impugned judgment. In view of the foregoing, we find no merit in this petition which is accordingly dismissed.

Let a copy of this order be sent to the Registrar
Generals/Registrars of all High Courts for being placed
before Hon'ble the Chief Justice of the respective High
Courts.

.....J.
(Markandey Katju)

.....J.
(Gyan Sudha Misra)

New Delhi;
26 November, 2010.



JUDGMENT