

(1980) 11 AHC CK 0024

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 7118 of 1973

Ashok Prapan Sharma

APPELLANT

Vs

The State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: Nov. 14, 1980

Acts Referred:

- Ancient Monuments Preservation Act, 1904 - Section 18, 3, 5(1)

Citation: AIR 1981 All 101

Hon'ble Judges: N.D. Ojha, J; M.N. Shukla, J

Bench: Division Bench

Advocate: Bharatji Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

M.N. Shukla, J.

In Rishikesh (Dehradun) there is a celebrated temple known as the temple of Bharat Ji Maharaj. By virtue of a series of Sanads which run into antiquity and into which it is not necessary to enter for the purpose of this case, the petitioner claims to be the Mahant thereof and absolute owner of two statues of Yaksh and Yakshani placed under a banyan tree (Bat Briksh) in the campus of the temple. These statues are alleged to be of great historical importance as well as religious sanctity. However, the District Magistrate, Dehradun addressed a letter dated 19-10-1973 to the Curator, Ancient Museum, Mathura a copy whereof was served on the petitioner (Annexure 3 to the writ petition) wherein it was mentioned that the District Magistrate permitted the Curator to remove the aforesaid two statues of Yaksh and Yakshani for the purpose of placing them for display in the museum of Mathura. The aforesaid letter purported to have been issued in the exercise of powers conferred under notification No. I718/IV-2(2)-65, dated 22-5-1968, a copy whereof has been filed as Annexure 4 to the writ petition. It is the letter dated 19-10-1973 which has been impugned in this writ petition.

2. In a nutshell the question which falls for consideration is as to whether such order directing the removal of the statues in question from the Bharat Ji temple to the museum at Mathura could be legally passed. The right to deal with ancient monuments is governed by the Ancient Monuments Preservation Act, 1904 {Act VII of 1904} (hereinafter referred to as the Act). The Act envisages a number of modes by taking resort to which the Government can deal with ancient monuments. The condition precedent, however, to embarking on any such action is a declaration u/s 3 of the Act. By virtue of such declaration an ancient monument can be treated as a protected monument within the meaning of the Act. Under this section power has been conferred on the Collector to propose with the previous sanction of the Central Government to the owner of a protected monument to enter into an agreement with the Central Government for the preservation of any such protected monument which is in existence. Such agreement would empower the Government to perform a number of actions which are enumerated in Sub-section (2) of Section 5 of the Act. Besides, Section 10 of the Act empowers the Central Government, if it apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, to direct the State Government to acquire it under the provisions of the Land Acquisition Act, 1894 as if the preservation of a protected monument were a public purpose within the meaning of that Act.

3. It has been categorically averred in the writ petition that no action under any of the provisions mentioned above was taken in the instant case to deprive the petitioner of the ownership of the two statues. We may mention that no counter-affidavit was filed in the case. On the other hand, Sri M. C, Gupta, learned Standing Counsel appearing for the State made a statement that he had instructions not to oppose this writ petition. Thus, the allegations made by the petitioner remain uncontroverted and we proceed on the basis that the petitioner is the owner of the statues which are sought to be removed in pursuance of the notification purported to have been passed u/s 18 of the Act.

4. Section 18 of the Act confers power on the Central Government to control the moving of sculptures, carvings or like objects. It reads:--

"18. Power to Central Government to control moving of sculptures, carvings or like objects:-- (1) If the Central Government considers that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the Central Government, the Central Government may by notification in the Official Gazette, direct that any such object or any class of such objects shall not be moved unless with the written permission of the Collector.

(2) A person applying for the permission mentioned in Sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Collector may require.

(3) If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner, whose decision shall be final.

(4) Any person who moves any object in contravention of a notification issued under Sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(5) If the owner of any property proves to the satisfaction of the Central Government that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under Sub-section (1), the Central Government shall either-

(a) exempt such property from the said notification;

(b) purchase such property, if it be moveable, at its market value; or

(c) pay compensation for any loss or damage sustained by the owner of such property, if it be immovable."

5. The crucial words of the above section relate to the direction that "any such object or any class of such objects shall not be moved unless with the written permission of the Collector. The tenor of the Act is that ancient monuments and objects of archaeological, historical or artistic interest must be preserved and no person including the owner should be allowed to move or remove them without obtaining the permission of the Collector. Section 18 fits in with this scheme of the Act. It is intended to impose a restriction that either an owner or any other person authorised in law to move such object shall not do so without a written permission of the Collector. Thus, Section 18 has a negative impact and is restrictive of the unfettered power which the owner or other competent person on his behalf would have otherwise enjoyed of dealing with such object. Sub-section (5) of Section 18 makes it absolutely clear that this provision is intended to apply to the owner of a property. In case he proves to the satisfaction of the Central Government that he had suffered any loss or damage by reason of the inclusion of such property in the notification published under Sub-section (1), the Central Government shall exempt such property from the said notification or purchase such property, if it be moveable, at its market value or pay compensation for any loss or damages sustained by the owner of the property, if it be immovable. Surely Section 18 cannot be construed as an enabling provision where- by a person other than the owner of the property may be authorised to remove such object from the possession of the owner. By virtue of the impugned order which is based on a notification made u/s 18 of the Act the District! Magistrate empowered the Curator of the Ancient Museum, Mathura to remove the aforesaid two statues which were situated in the temple of Bharat Ji Maharaj for placing them for display in the aforesaid museum. Such could never be the intention of the Legislature in enacting Section 18 nor is it susceptible to such interpretation and the impugned order travels completely out of the ambit of the section. Without any previous action under Sections 3, 5 and other relevant

provisions of the Act the District Magistrate had no jurisdiction to authorise any person other than the owner of the property to remove; or shift the said statues of which the petitioner was the owner from the temple in the campus of which they were placed. We are, therefore, satisfied that the impugned order was wholly illegal and! without jurisdiction and that it must be quashed.

6. In the result this writ petition succeeds and is allowed but no order is made as to costs. The impugned order dated 19-10-1973 passed by the District Magistrate, Dehradun is quashed. A mandamus is issued prohibiting the Curator, Ancient Museum, Mathura from removing the two statues of Yaksh and Yakshani from the campus of the temple of Bharat Ji Maharaj in Rishikesh.