

(2005) 08 AHC CK 0225**Allahabad High Court****Case No:** Civil Misc. Writ Petition No. 37055 of 2001

Sri Ramdas, Disciple of Sri Sri
Purushottam Das Ji Maharaj

APPELLANT**Vs**

State of U.P., U.P. Jal Nigam and
U.P. Pollution Control Board

RESPONDENT**Date of Decision:** Aug. 8, 2005**Acts Referred:**

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 122B

Citation: (2005) 6 AWC 5312**Hon'ble Judges:** Vikram Nath, J; Sunil Ambwani, J**Bench:** Division Bench**Advocate:** Party in Person, for the Appellant; M.M.D. Agarwal, P.N. Ojha, Vashistha Tiwari, Ranvijay Singh, Ashok Mehta and Satya Prakash Singh and S.C., for the Respondent**Final Decision:** Dismissed

Judgement

Sunil Ambwani, J.

Heard Sri Ram Das Ji, the petitioner in person; learned Standing Counsel for the State of U.P., Sri M.M.D. Agarwal for U.P. Jal Nigam, and Vashistha Tiwari for Vrindavan Vikas Samiti, respondent No. 4.

2. This writ petition, filed in public interest, seeks for directions to restrain respondents from construction of a crematorium (Shavdah Grih) at Sri Banshibat place by the side of Vrindavan Panchkoshi Parikrama Marg on plot No. 514 on the banks of Holy river Yamuna, in village-Dungoli, Tehsil-Mant, District-Mathura. The petitioner claims to be the disciple of Sri Purushottam Das Ji Maharaj "and a resident of "Hari Om Namah Shivay Ashram" at Vanshivat, Vrindavan, District-Mathura. He has filed this petition, stating that Vrindavan, a place of Ras-Lila of Lord Krishna has its religious importance amongst the Hindus. The Vrindavan is the actual place of Ras-Lila of Lord Krishna and is famous throughout the world. The pilgrims do

parikrama on their feet, as well as by crawling on the parikrama marg. Crores of people come here to do parikrama as well as to worship Lord Krishna. The Yamuna Pollution Control Unit of U.P. Jal Nigam, taking care of the pollution of river Yamuna has proposed to construct a crematorium on plot No. 514 at village Dangoli, Tehsil-Mant, District-Mathura, and has constructed four platforms in the year 1995 which were never used. They have started construction of raising a boundary wall and three rooms. There are religious institutions, as well as dense residential colony around the place. The petitioner has objections to the selection 01" site and construction of crematorium at Vanshivat and claims to be representing the entire Hindu community. In substance the objections are that there are religious sentiments attached to the place. It will cause disturbance to the residents and pilgrims walking on the parikrama marg adjacent to the proposed construction.

3. On 8.1.2002 after hearing the petitioner in person and the counsel for Jal Nigam and U.P. Pollution Control Board, a direction was issued to publish a public notice in newspaper having circulation at Vrindavan by 22.1.2002, inviting views and comments on the issues involved in the writ petition. The public notice was published in "Dainik Amar Ujala" on 21.1.2002. In response to this notice an impleadment application was filed by "Vrindavan Vikas Samiti" which has established the Golok Dham Sav Dah Grih Nirman Yojana. The District Administration allotted five acres of land to the Society on the plot and that the State government has given aid for the construction to be made under the supervision of U.P. Jal Nigam and U.P. Pollution Control Board with its regional office at Mathura.

4. Counter affidavits have also been filed by Sri Surya Mani Lal Chand, Deputy Collector, Mathura; Shri Krishna Gopal, Project Manager, Yamuna Pollution Control Unit, U.P. Jal Nigam, Mathura; and Sri Nandan Chakrabarti, Tehsildar, Mathura

5. Sri Surya Mani Lal Chand, Deputy Collector, Mathura in his short counter affidavit states that the place is being used as traditional burning ghat for quite a long time, as per the report dated 6.1.2002 of the Health Officer , Nagar Palika. About 35-40 dead bodies are burnt at the place in a month. There is no other public land available near newly constructed bridge for using as Shavdah Grih, and that there is no resentment in general public about the constructions. The petitioner-Sri Ram Das Ji has constructed the Ashram known as "Shri Hari Om Namah Shivaya Ashram" adjacent to the site, and the road. He has unauthorisedly occupied the Gaon Sabha land. The Tehsildar submitted a report dated 20.11.2001 to the Additional District Magistrate (Finance) reporting that the "Hari Om Namah Shivaya Ashram" measuring 1.05 acres (0.452 Hectare) with a temple, cow-shed and a residential room have been constructed on the part of Khasra No. 514, on the Yamuna Bank. The Ashram has taken unauthorised occupation of the Goan Sabha land and has raised construction without permission. A civil Suit No. 30 of 1994 between Sri Panna Lal Gaur and Baba Ram Das for injunction against Baba Ram Das from interfering with the possession of plaintiffs land was dismissed on the ground that

the plaintiff Sri Panna Lal Gaur could not establish his right over the suit land. The proceedings u/s 122 B of the Zamindari Abolition & Land Reforms Act, 1951, for eviction of unauthorised occupant from Gaon Sabha land were initiated against Sri Ram Das. In these proceeding, he had relied upon the permission of Additional District Magistrate (Administration) dated 11.10.1994, and the Judgment in suit No. 30 of 1994 between Panna Lal Gaur and Baba Ram Das. He could not establish his right to occupy the land as he has no title or lease or even allotment of land in his favour. The petitioner has intentions to grab the entire plot No. 514 on the Yamuna Banks.

6. Sri Krishna Gopal, the Project Manager, Yamuna Pollution Control Unit, U.P. Jal Nigam Mathura states in his counter affidavit, that 40 acre of land was given to Yamuna Pollution Control Unit by the order of the District Magistrate and Sub Divisional Officer, Mathura dated 2.3.1996 and 7.5.2001 respectively for construction of the crematorium over the plot No. 514 of village Dangoli Khader, Pargana Math, District Mathura, and this allotment has been recorded in the Khatauni of the years 1400F to 1405F and 1406F to 1411F. This plot was recorded as Kabristan and crematorium as class 6(7) land in the revenue record and has been traditionally used as "Shamshan Ghat" since long. In the year 1996, the crematorium was established with the project of construction of four platforms covered by tin sheds. The Ministry of Environment and Forest (National River Conservation Directorate) Government of India, has approved and sanctioned the expenses for additional works of improved wood site at Vrindavan U.P. on 9.7.2001, under the Yamuna Action Plan in the extended phase of Ganga Action Plan Phase-II at the estimated cost of Rs. 11.55 crores. The scheme was required to be completed by 31.3.2002. The U.P. Jal Nigam carrying out the constructions and the work of boundary wall has constructed up to Damp Course just above the ground level. The boundary wall is to be constructed upto the height of seven feet. The "Vrindavan Sanrakshan Evam Vikas Nidhi" was entrusted to execute certain improvement works. Apart from this the "Vrindavan Vikas Samiti" has been entrusted to develop this 5 acres of land for crematorium, according to its own scheme in the name of "Golok Dham Shav Dah Grih". The scheme does not create any hurdle either in the panchkosi parikrama or to the petitioner's Ashram, rather it improves the amenities and facilities of Shav Dah Grih. Under the Hindu Mythology Dah Sanskar has always been identified with pious place like Sangam at Allahabad and Mani Karnika Ghat in the city of Varanasi on the bank of wholly river Ganga. Yamuna is also a holy river like Ganga and that crematorium at Vrindavan has been constructed both to carry out the religious practice and to save the river Yamuna from pollution. The improved wood crematorium as compared to conventional one's requires lesser fuel, lesser cremation time and lesser smoke generation. Fugitive emission/foul smell can be prevented to a great extent by this method. There are other Ashrams, temples residences/clinics within 200 meters of the site, but no one has raised any objection. The present site of crematorium is approximately 250 meters away from the stream

of river Yamuna but during the Mansoon the stream touches the site. A considerable amount of public money has already been invested in the scheme.

7. Sri Nandan Chakabarti, Tehsildar, Mathura in his counter affidavit states that about 40-45 years ago the dead bodies were burnt at Panighat. After the river Yamuna changed course to about, one and half kms away the residents of Vrindavan started burning dead bodies at Banshi Vat near river Yamuna, after which they take bath in the river and disperse ashes in the river. The District Magistrate found that Pani Ghat is no longer used for cremations. The petitioner has encroached upon the Gaon Sabha land. An order dated 9.10.1999 was passed for demolition of construction and dispossession, and fine was imposed upon the petitioner. He deposited part of the amount and has to further deposit Rs. 17015/-. The site is about 900 Ft. away from Panchkosi Marg whereas Panighat, the alternative place suggested by the petitioner is 50 ft. away from Panchkosi Marg.

8. Sri Harish Chandra Kulshrestha has filed an affidavit on behalf of "Vrindavan Vikas Samiti", alleging that the construction of the crematorium was under consideration for a long period of time. The petitioner is an unauthorised occupant of Gaon Sabha land and is keeping about 50 cows near crematorium site since about 3 to 4 years. In the Hindu Mythology after cremation some part of the body has to be thrown in the river. To avoid the pollution, the crematorium was proposed to be constructed under the supervision and direction of U.P. Pollution Control Board. The Government- aided the construction of improved wood crematorium at the site. The scheme was also approved by the "Vrindavan Vikas Samiti" for developing the site. A collective representation was made to Nagar Palika Parishad Vrindavan, by various trusts and Ashrams detailed in para 3(v) of the counter affidavit for establishing the crematorium. The crematorium site is not in the way of Panchkosi Parikrama. The petitioner proposes to expand his Ashram and has an axe to grind

9. By an order dated 13.8.2002 the Court appointed Sri Prakash Krishna (now Hon. Mr. Justice Prakash Krishna) and Sri S.P. Singh as Special Officers to visit different ghats of Vrindavan and to find a site suitable for crematorium particularly in the context of the allegations that the construction of crematorium will cause interference in the parikrama. The Advocate Commissioners visited Vrindavan on 23.8.2002. They visited about 14 ghats and surveyed the area of the temples. Their report and suggestion are quoted as below:

"VISIT REPORT

6. The team visited the cremation site which is in front of Shiv oham Ashram. It is very near to Parikrama Marg. This area is commonly known as Banshibat area. The team visited pani Ghat area Every body in the team from city of Vrindavan and the local people and Sanyasi accepted that some 25 years before the Panighat was place for "Shavdah" and "Shav Kriya". From city of Vrindavan across Parikrama Marg, the road lead to Panighat which is now in damaged condition. Now at present position

of Panighat area is changed. Some Ashrams at Parikrama Marg facing both sides of Parikrama Marg exist.

7. Entire Kumbha area (in which Banshibat area and crematorium exist) is in plot No. 514, which is vast area. After plot No. 514, the Gaon Sabha land of Gagauli and Aruwa exist. Four tin sheds in abandoned condition exist there, which is said to be burning place of dead bodies. The tin sheds are so built that it can not protect any person even in small rain with winds. Yamuna river is flowing far away from this place. Even in rainy season the Yamuna river may not reach near the place of crematorium. This abandoned vast land is commonly known as Kumbh area. The boundary at the cremation site is about 2" high. The crematorium is near to Abadi area, very near to historical Koshi Ghat and certainly if "" it remains here, it will create immense environmental and hygienic problem for people of nearby locality. The present crematorium is very near to Parikrama Marg.

SUGGESTIONS

8. We suggest another place in the same plot No. 514 towards east. This area is approachable by 40" wide road from Parikrama Marg. Across Parikrama Marg one road also exist commonly known as Taria Sthem road going to main city of Vrindavan. The status of land is same as of Banshibat area (Kumbh area). The Yamuna river is near to this place and crematorium can be build at any place. This 40 feet road ultimately reaches to Deorahwa Baba Ashram and if any crematorium is built towards city side Bank of Yamuna river it will be far away from both city and Parikrama Marg and also far away from Deorahwa Baba Ashram. The area is totally abandoned but approachable by road and somehow or the other is in the vicinity of Vrindavan city.

ANOTHER ALTERNATE PLACE - FOR CREMATORIUM

9. According to wisdom of the team, another place is near new bridge of Yamuna river in the area of Pani Ghat which is far away from Parikrama Marg straight way approachable from the city of Vrindavan where Yamuna river is always flowing in full capacity and either in summer or in winter the Yamuna river never changes its stream. The area is full of pleridophyte plantation, greenery is well visible surrounding the area. There is no habitation around the area, no Ashram, no temple are situated within the radius of near about three furlongs. The status of land and tenurial rights are like other land at Kumbh area and Banshibat area where at present crematorium exist, according to us there can not be resentment from any quarter of section of the society. We can not say about resentment by certain people having their vested interest. Apparently as there is no residential house, Ashram, habitation and the area is abandoned seems to be the best suited ideal place for cremation purpose. The flow of Yamuna river is semi-circular (v/kZ pUnzkdkj) and according to the rituals of Hindu Dharmashastra the sun is also east and it is in (lw;kZfHkeq[k nf{k.kkorZ) in east side cremation place in Kashi.

THE ENVIRONMENTAL AND HYGIENIC CONDITION OF CITY OF VRINDAVAN.

10. The Padma Puran, while describing the devine character of Vrindavan illustrate that Heart of Brij Bhumi (land) is Vrindava. In Purans and in different Samhita, Vrindavan is full of "Brahma Sukh" and Ashvarya of Sadchitanand. In Patal Khand of Padma Puran it has been described in the following manner:

iw.kZ czge lq[ks"o;Z fuR;kekuUn eO;;eA

cdq.Bkfn rna"kka"k

(Padma Puran Patal Khand 66.60)

11. The idol worship of Lord Krishna started somewhere after he became king of Mathura. The archaeological survey indicate recitals in Brahmi script on "Dwadashadiya" Tila which is related to the period of Raja Gom a.

12. The Vrindavan is - such a sacred place of worship but the environmental condition is very poor. The proper arrangement of cleaning of Ghats are in very poor condition. The drains were found choked dirty water overflowing on the street. Sanitation is also very poor. At various places bad smell antagonises the mind of people who they have come to the holy city. Keshi Ghats and Uptstrem Ghats are have great historical and archaeological value but these are placed in very dilapidated condition. They require constant maintenance and proper upkeep.

5.9.02

Sd/- S.P. Singh
Satya Prakash Singh
Advocate.

Sd/- Prakash Krishna
Advocate."

10. Thereafter the matter could not be heard for about two years and was dismissed for default on 22.9.2004. A recall application was filed It was then that the matter was nominated to us. We allowed the recall application 16.2.2005. Since considerable time had passed, which may have changed the facts and circumstance at the site, we directed the respondents to file short counter affidavits bringing the current status of the land and the developments around it, on the record. In response to the order dated 9.5.2005, Sri M.M.D. Agarwal Advocate has filed a supplementary counter affidavit of Sri, Nizamuddin Khan, Project Engineer, Yamuna Pollution Control Unit, U.P. Jal Nigam Agra, camp at Mathura and Sri Vashistha Tiwari Advocate has filed a counter affidavit of Sri Harish Chandra on behalf of respondent No. 4.

11. The petitioner had filed a supplementary affidavit, in May 2002, enclosing about sixty nine letters, signed by various Mahants and Pujaries of various Ashrams,

Temples and Principals of Schools at Vrindavan, raising their objections to the constructions of crematorium at Banshibat and suggesting that the. crematorium be constructed at Panighat or at some other place.

12. After having heard the parties at length we find that Sri Ram Das Ji, Disciple of Shri Purushottam Das Ji Maharaj has occupied the land of Gaon Sabha on plot No. 514 on the banks of river Yamuna without any authority in law. He has not produced any order of allotment or lease in his favour. He has raised constructions of the Ashram without any authority. The documents dated 11,10,1994 relied upon by him only allow him to raise the temporary tin shed. The dismissal of suit by a private person does not give him any right to occupy the land. His Ashram is situated towards the south of Panchkosi Parikrama Marg away from the banks of river Yamuna. He appears to have a deep personal interest in restraining the respondent authorities from raising construction of crematorium Although he has filed the letters from various temples ashrams, schools of Vrindavan, no one has appeared in these proceedings inspite of notice published under the orders of this Court in daily newspaper having wide circulation in Vrindavan. The petitioner does not deny that the site has been used for burning ; dead bodies on the banks of river Yamuna for more than 25 years after the river changed course from Panighat. This fact is also reported by the Advocate Commissioners.

13. The respondents have raised objections to the bonafides of the petitioner to maintain the public interest litigation. It is contended that the order of demolition and eviction has been passed against the petitioner. He does not have any interest much less sufficient interest, to maintain the proceedings, and that an unauthorised occupant cannot represent the residents of Vrindavan, and maintain the action, in public interest.

14. In Ashok Kumar Pandey Vs. The State of West Bengal and Others, the Supreme Court, after noticing the case law from . Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, to Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., held as follows:

"12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name- of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting bonafide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or

from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs."

15. Again the Apex Court in R and M Trust Vs. Koramangala Residents Vigilance Group and Others, while dealing with a public interest litigation challenging the construction of multi storeyed apartments and demolition of already constructed buildings on the disputed site in Koramangala lay out in Bangalore, on the ground that licence given by the Municipal Corporation was illegal turned down the contention and dismissed the appeals, holding that "This sacrosanct jurisdiction of public interest litigation could be invoked very sparingly and in favour of vigilant litigant and riot for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends."

16. The petitioner in the present case is illegally occupying the land near the proposed site for construction of crematorium. The Panchkosi Parikrama Marg divides the Ashram with the proposed construction. He has no authority to occupy it and is under orders of eviction and demolition of constructions of the Ashram. His only objection to the proposed site is that the proposed construction IS; adjacent to Panchkosi Parikrama Marg and in the thick of the residential area, and that the burning bodies will hurt the religious sentiments of the pilgrims, and that there are more and better sites for construction of the crematorium.

17. The Court had invited objections from the residents of the area. No one has come forward to support petitioner's case. We cannot rely upon the letters written by the Managers and secretaries of Ashram, Temples and Schools in support of petitioner's objection, as these persons are not before us. We, therefore, find that the petitioner as an unauthorised occupant of adjoining land, and with no direct relation with the cause espoused by him, does not have sufficient interest maintain this writ petition.

18. The site was selected by the District Administration after its allotment by the District Magistrate and the approval of the Yamuna Pollution Control Unit, of the U.P. Jal Nigam, Mathura. It was also approved by Ministry of Environment and Forest (National River Conservation Directorate) Government of India and that the State Government released the grant for construction of the modern wood base crematorium. The "Vrindavan Vikas Samiti" resolved to improve the area by planting trees. Sri S.R. Maurya, the Assistant Environment Engineer, Mathura, who had prepared the report, for selecting the site has also filed his affidavit dated 13.5.2002 giving reasons including the object of checking pollution of river in selecting the site.

19. From the reports and the affidavits filed in reply, we find that after river Yamuna changed its course and started flowing at about one and half kilometers from Panighat the residents of Vrindavan have used the site at Banshibat on the bank of the river for cremation. For the last about twenty five years this place has been used

as crematorium without any objection from any citizen, religious institutions or organisation. This site was selected and preferred with the approval of all the authorities. The authorities must have considered all the aspects before selecting the site. The objection that the burning of dead bodies near Panchkosi Parikrama Marg will hurt religious sentiments of the pilgrims is also not sustainable from the site plan filed by the parties on record. We find that the site is more than 50 feet from Parikrama marg. Further the crematorium is surrounded by a 7 feet boundary wall and with its modern construction of cast Iron platforms and tin shed it will not cause such emissions or smell, which may disturb the pilgrims or hurt their sentiments.

20. The Special Officers (Advocate Commissioners) have not raised any serious objection to the proposed site except by stating that the river is flowing at a distance and that it is near abadi area and Panchkosi Parikrama Marg. Though we appreciate the concern of the Special Officers to the environmental conditions of the fourteen ghats at Vrindavan, we find that they instead of examining the suitability of the site in dispute were more concerned in finding out an alternative site. They appear to have laboured with the thought that the Court has disapproved the site at Vanshivat. It was not so. In public interest litigation the Courts do not ordinarily interfere with the matter of selection of site for construction to be used for public purposes. There is no suggestion on record to show that the respondent authorities had selected the site with any oblique purposes - or that the proposed site was wholly unsuitable for cremations. It is not for the Court to suggest or to approve any alternate site for construction to be used for public purposes. On the contrary where it is found that the land is in use of the public for the performance of religious rites, or for any public purposes like fair, mela or celebrations,, for long period of time, no interference in the selections of such site by the administration should be made.

21. The Apex Court in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, observed as under:

" Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is clear violation of Constitutional or Statutory provisions or non-compliance by the State with its Constitutional or Statutory duties."

Further in Janardan Vs. State of U.P. and others, this Court has held that where Gaon Sabha land is reserved for Holika Dahan and was marked for common use of public of the village, neither the Court nor the District Administration should not interfere in the use of such land of common benefit.

22. For the aforesaid reasons, the writ petition is dismissed. The interim orders are discharged. The Court hopes and trust that the constructions of the crematorium will be completed very soon and that the entire area shall be developed to maintain

serenity and ambience befitting cremations, for the souls departing from the holy city of Vrindavan.