

(2011) 10 AHC CK 0150

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 38165 of 1993

Atul Krishna Goswami and
Another

APPELLANT

Vs

Munsif Mathura and Others

RESPONDENT

Date of Decision: Oct. 20, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2012) 2 ADJ 381 : (2012) 3 AWC 2522

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.

Heard Sri Pankaj Misra, learned counsel for petitioner, Sri Sanjay Goswami for respondent No. 2 and perused the record.

2. This writ petition under Articles 226/227 of the Constitution has arisen from the order dated 26.6.1993 (Annexure 14 to writ petition) whereby petitioners' application dated 15.6.1993 has been rejected.

3. The facts giving rise to the present dispute in brief may be stated as under.

4. Petitioners belong to the family of Goswamies claimed to have customary and hereditary rights of performing Sewa in the Temple where deity is Thakur Sri Banke Bihari Je Maharaj. The Temple is situated at Beharipura, Vrindavan, Mathura. It is said that the aforesaid Temple is a public trust of religious nature. The right to perform Sewa in the aforesaid Temple is acquired by members of family by birth. It is said that Temple of Thakur Sri Banke Behari Ji belong to descendants of Swami Haridas Ji Maharaj since ancient time. The Sewa-Pooja of deity Thakur Sri Banke Bihari Ji Maharaj was being performed by Goswamies (family members) of the

Sampraday and was divided in three branches: (1) Shringar Bhog (morning), (2) Raj Bhog (day), and (3) Shayan Bhog (evening). The branch of Shringar Bhog extinguished with passage of time and since then it is being performed by members of remaining two branches, in turn, in addition to their own respective branch of Raj Bhog and Shayan Bhog.

5. An Original Suit in representative capacity for injunction against Goswami Phundi Lal and others of Shayan Bhog branch was filed by Onkar Nath and others. The Suit was registered as O.S. No. 156 of 1938. It was decreed by Court of Munsif, Mathura after deciding the rights of Goswamies of two branches of Sewa-Pooja. The Court prepared a scheme appended and made part of the judgment. The objective of scheme as appear from Annexure-1 to this petition reads as under:

Object

The object of the scheme of management is

(1) to provide or arrange for the due performance of religious services and observance of festivals and other religious and customary ceremonies in the temple in question according to the negligence faith and virtual of Vaishava Hindus, peduliar to the temple of Vallabhi Sampradaya.

(2) to provide suitable arrangement for the convenience of worshipers and pilgrims visiting the temple for worship.

(3) To provide for the repairs and management possession and control of the property of the temple, immovable and movable, the collection of rents, dues, offerings, the investment and application of the income the maintenance and verification from time to time of the list of clothes, utensils, furniture, jewellery, value marks of identity of the same and to do all necessary for the dues realization and collection of all income from any source whatever to the deity and, to acquire, take possession of by suit or otherwise of all the properties of the temple in possession of any person on behalf of the deity, to arrange for sale custody of all the moveables and cash in some rent to invest its funds for income of the deity.

(4) to keep the accounts of all income and expenditure of money of the deity, to have such accounts audited every year by some chartered account, to be appointed by the Committee, and publish the annual report so audited in such manner as the committee deem proper.

(5) to appoint such salaried or unsalaried servants, to suspend or dismiss them, to fine or reward them and to do all the necessary to control the servants employed for management of the temple and its properties now existing or to be acquired in future.

6. Para 3 of the scheme talks of administration by a Committee of Management and reads as under:

3. Administration

The function of management will vest in a committee which shall be constituted as provided hereafter. This committee shall carry out all the object of the scheme or management to the best of its ability as indicated in para 1 to 5 Head 2 and shall represent the deity in all suits for or against the deity and all properties belonging to the deity shall for management vest in this committee. This Committee of management shall hereafter be called the "Committee".

7. The further provisions lay down the manner of constitution of Committee of Management and other necessary details. Para 20 constitute a provision empowering the Committee of Management to remove any member and para 20 (a) provides for imposition of fine upon any member found defaulter which is subject to confirmation by the Munsif. Para 21 of the Scheme covers the situations not specifically dealt in the scheme so as to make the operation of Scheme perpetual, workable in furtherance of the objects of formulation of the said Scheme.

8. It is said that one of the ceremonies performed in the Temple since time immemorial is erection of "Phool Bangla" i.e. structure made of flowers outside the "Nij Mandir" in the Jagmohan which is an open space in the shape of Courtyard in the Temple premises. Such structure is mainly erected during April to August. Devotees who wish to erect flower structure are given free dates by Goswami whose turn of Sewa is running.

9. The Committee of Management passed a resolution on 22.4.1992 to the effect that any devotee wishing to have his name written at the feet of Thakur Ji Maharaj would have to pay to Committee of Management, compulsorily a sum of Rs. 2100/- and in case he does not wish his name to be written, shall pay compulsorily Rs. 101/- to Committee of Management. It also resolved that the devotee if fails to make payment, then it shall be liability of the Goswami having turn of Sewa-Pooja. Challenging the said resolution petitioner No. 1 and one Arvind Goswami moved an application before Munsif, Mathura under Clause 21 of the Scheme. The Munsif initially passed an order on 11.6.1992 directing the Committee to re-consider the matter and also to frame detailed Regulations. Committee of Management reiterated its decision vide resolution dated 12.7.1992. However it added that in case of default of payment of amount as resolved earlier, a late charge of Rs. 1000/- shall also be payable by the Sewa Adhikari. Again an application was filed by petitioner No. 1 and Arvind Goswami challenging both the resolutions dated 22.4.1992 and 12.7.1992. When the matter was pending, in the meantime, the voters list was published wherein name of petitioners was shown as defaulters. The said list in which petitioners were shown as defaulters was challenged before Munsif vide an application dated 15.6.1993 which has been rejected by Munsif, Mathura vide impugned order dated 26.6.1993.

10. It is contended that the order passed by Munsif is wholly illegal. It is further contended that Committee of Management has no jurisdiction beyond the Scheme approved by Munsif, Mathura and, therefore, the two resolutions as also the consequences thereof by treating the petitioners defaulter are all illegal.

11. At the outset, this Court required Sri Pankaj Misra, learned counsel appearing for petitioners to address the Court as to how and in what manner the application of petitioners which has been rejected by means of impugned order would come within the ambit of clause 21 of the Scheme but he failed to give any reply.

12. Para 15-C of the Scheme confers power upon Committee of Management to make Rules for day to day administration of Temple. This clause gives wide powers to Committee of Management who is primarily entrusted with the duty of Management of Temple and its powers cannot be restricted unless it can be shown that wide interpretation would cause violence with other provisions of the Scheme or would contravene any specific provision contained therein. Clause 21 would be attracted only when something is not covered by the Scheme or when any modification in the Scheme is desired and not otherwise. Once the power of day to day administration is conferred upon Committee of Management with further power of framing Rules, the resolution with respect to payment of dues on rendering Sewa of a particular nature and further demand of certain amount for non observance of such Rules cannot be said to be a resolution covering a matter not covered by the Scheme. In my view, the two resolutions can safely be covered by para 15-C which confer powers upon Committee of Management to make Rules for day to day administration. Sri Pankaj Misra, learned counsel for petitioner could not make any substantive argument to persuade this Court to take a different view in the matter.

13. No other argument has been advanced.

14. In the result, I do not find any error apparent on face of record in the order impugned in this writ petition.

15. Dismissed.

16. No other as to cost.