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Court : Madhya Pradesh

Decided On : Jul-21-1999

Reported in : AIR2000MP28; 1999(2)MPLJ660

Judge : B.A. Khan and ;Shambhoo Singh, JJ.

Acts : [Municipalities Act, 1961](#) - Sections 346; [Constitution of India](#) - Article 226

Appeal No. : Writ Petn. No. 1530 of 1988

Appellant : inder Kumar Panchal and anr.

Respondent : State of Madhya Pradesh and anr.

Advocate for Def. : B.A. Chitale, Govt. Adv., ;V.K. Dubey and ;S.S. Samvatsar, Adv.

Advocate for Pet/Ap. : M.M. Asudani, Adv.

Disposition : Petition dismissed

Judgement :

Khan, J.

1. PETITIONERS claim to be members of Vishwa Hindu Parishad, Indore and social workers also. They claim that 'Nav Durga Mata Temple' situate at Manish Bagh Colony looked after by one Ishwarlal, was illegally and forcibly demolished

by official respondents preventing them from exercising their fundamental right of practising religion and faith of their choice. It is alleged that this was done in violation of orders passed by this Court in Ishwarlal's writ petition No. 944/98 requiring them to take recourse to procedure established by law.

2. Petitioners claim that this temple existed on the land donated by Manish Bagh Co.-op. Housing Society's Ex-President as evidenced from Annexure P6 permitting Poojari Ishwarlal to raise/renovate the temple. The demolition incident was also witnessed by one sitting M.L.A. Laxman Singh Gaur testifying that Collector, Indore and Commissioner, Indore Municipal Corporation accompanied by police force had demolished the structure and beaten and abused people present on the spot. It is accordingly prayed that Government should be directed to conduct an enquiry against them and punish them for being guilty of misuse of their office and powers and it should be asked to re-erect and reconstruct the temple on its own cost or else to pay damages and till it was done to allow devotees to construct the temple on their own.

3. Reply has been filed by respondents No. 5 and 6, office bearers of the Society. According to them one Ishwarlal had illegally encroached upon the disputed land which was otherwise reserved for common amenities in the housing colony and constructed a three bed-room residential house thereon with all requisite facilities but without obtaining any building permission or sanction from the Municipal Corporation. However, he had raised a Board of 'Nav Durga Mata' temple on it to ward off any threat to the structure. Upon this colony residents filed complaints and fearing action Ishwarlal filed W.P. No. 944/98 seeking a restraint order against the demolition of structure. This writ petition was disposed off on 26-8-1998 requiring municipal Corporation to proceed in the matter in accordance with law. Consequent thereupon municipal Corporation issued notices dated 4-9-1998 and 5-9-1998 to said Ishwarlal requiring him to show title to the land. He appeared but failed to show title to the land leading to the passing of order 7-9-1998 for removal of the structure.

4. It is explained that Manish Bagh Housing Colony was spread over 5.40 acres and out of this 10% of the land was to be kept vacant for common purposes under

Bhumi Vikas Rules and the disputed land encroached upon by Ishwarlal fell in this

5. The municipal Corporation has also filed a reply taking by and large the same stand that the disputed land was reserved for public utility in the layout sanctioned by the Town and Country Planning Deptt. and that Ishwarlal had encroached upon and constructed on this. Pursuant to order dated 26-8-1998 passed in W.P. No. 944/98 filed by him, he was put on notice on 4-9-1998 and affording an opportunity of hearing but he could not submit any documentary evidence supporting his title to the land. He was accordingly treated as encroacher and his illegal structure removed on 7-9-1998. It is also pointed out that there was a remedy available against this under Section 307(5) but none had chosen to avail of it.

6. Respondent No. 1 has by and large adopted stand taken by Municipal Corporation and has stated that he had deputed his S.D.O on the spot at the request of the Corporation Authorities to assist them in discharge of their statutory duty.

7. It is in this background that we are called upon to grant the reliefs prayed for and which, in our view, could not be granted. Petitioners are firstly wanting an enquiry against official respondents for their alleged misuse of power and office. But nothing was placed by them on record to show that they were guilty of such misuse. It is not for this Court to order roving and random inquiries against officials moreso when they claim to be engaged in the discharge of their statutory duty. If petitioners were convinced of the worth of their plea they could as well have approached the competent Authority in Govt. (employer) to demand such action which had all the authority to examine such grievance and take action under Service Rules applying to these officials. The Jurisdiction of this Court to order enquiries against Govt. officials is limited and for this a cast iron foundation was required to be laid to obtain appropriate orders from the Court. It is not the province of the Court to order such inquiries against officials on one sided old and generalised allegations borne more out of the reaction to their action which may be supported by legal sanction. And then Court must have power and jurisdiction conferred by law to order such inquiry which may not be available in all situations.

8. The same holds true about petitioners' second prayer for reconstruction of the temple at Govt. expense. Nothing is before us to show that the temple in question was the public temple or that petitioners were performing their Pooja in this for ages and were entitled to any compensation or for its reconstruction from public funds. They should again be well advised to approach the Govt. in the matter and seek redressal of their grievance.

9. Petitioners' third prayer that devotees be allowed to construct the temple on the disputed land out of their own funds is also neither here, nor there. It is not firstly known who stops them from so doing, if it was permitted by the laws in force. Moreover It is not again for this Court to grant any such permission or to direct the Govt. any of its bodies to do so.

10. Mr. Asudani, L/C for petitioners made a last minute submission that since petitioners' fundamental right of practising and processing religion of their choice was infringed by the impugned demolition and, therefore, Govt. was under an obligation to restore the status quo ante by either allowing them to construct the temple or to do so at their own cost. Reliance in this regard is placed on AIR 1954 SC 282, AIR 1961 SC 1402. AIR 1958 SC 255 and AIR 1972 SC 1586.

11. There is no quarrel with the propositions laid down in these judgments. But we are at a loss to understand how petitioners were being prevented from practising and professing their faith and religion. It is not their case that they could do so only in the demolished structure and all other places of worship in the city were out of bounds for them. They had not even bothered to state that 'the temple' was a public temple or that they were praying therein for years on. They only seem to be hell bent on retaining the disputed land for Ishwarlal who had not come forward to complain about or challenge the alleged illegal demolition. In the circumstances it is not possible to hold that petitioners' right of practising their religion and faith was in anyway infringed by the impugned action.

12. Mr. Asudani made a last minute submission that petitioners had filed some F.I.R. with some police agency which was not registered. Petitioners have not made any such averment in their petition. Nor was any prayer made for registration of any such F.I.R. All the same, if the concerned police agency was

seized of any such F.I.R. on the subject matter it is directed to examine it and deal with it in accordance with law. The petition accordingly fails and is dismissed.

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