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Devta Chikhreshwar Vs. Union of India (Uoi) and ors.

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Court : Himachal Pradesh

Decided On : Apr-28-1972

Reported in : AIR1972HP122

Judge : Chet Ram Thakur, J.

Acts : Himachal Pradesh Abolition of Big Estates and Land Reforms Act, 1954 - Sections 27 and 92; ;Himachal Pradesh Abolition of Big Estates and Land Reforms (Manner of Determination and Sanction of Rehabilitation Grants) Rules, 1965 - Rule 4; ;Constitution of India - Articles 226 and 227

Appeal No. : C.M.P. (M) 35 of 1970

Appellant : Devta Chikhreshwar

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : B. Sita Ram, Adv. General

Advocate for Pet/Ap. : H.S. Thakur, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Chet Ram Thakur, J.

1. This writ petition under Article 227 of the Constitution of India has been filed by Devta Chikhreshwar through Shri Daulat Ram, Karta and President of the Temple of the aforesaid deity as a next friend for setting aside the order and judgment of the learned District Judge, dated 24th November, 1967, upholding the judgment and order of the learned Compensation Officer, Mahasu.

2. The petitioner's land vested under the provisions of S. 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (hereinafter referred to as the Act) in the State Government on the passing of the Act. The; petitioner alleges that he is a small landowner and he had applied to the Compensation Officer for giving him rehabilitatioa grant as he had no other land for his maintenance. But this application was opposed on the ground that the applicants viz., Daulat Ram and Mohan Lal were not competent inasmuch as they had no locus standi to file this application on behalf of the Devta. Further that the Rehabilitation Grant Rules were not applicable to the Devta. The learned Compensation Officer dismissed the application on the ground that Daulat Ram and Mohan Lal had no authority to file this application on behalf of the Devta. According to him it was the District Temple Committee which was competent to make an application. This order was made on 30th Au-gust, 1967. Against this order an appeal was filed in the Court of the District judge, who dismissed the same on the ground that the appeal was barred by time. The limitation of appeal was 45 days and the appeal was filed 9 days after the expiry or the limitation.

3. The petitioner has, therefore, filed the present writ petition under Article 227 of the Constitution through Shri Daulat Ram Kardar as the next friend. It is stated that the petitioner deity is worshipped by a large number of people of the surrounding areas and they have got implicit faith in it. They also believe that in case the customary rituals and other rites are not performed in the temple, they may incur the wrath of the deity. After the investment of the land of the petitioner in the Government, there is no source of income left to the petitioner deity to carry on with the necessary rituals and other rites. There is no legally constituted district temple committee, but the Deputy Commissioner under some circular is termed as President of the District Temple Committee. As such a Deputy Commissioner is a Government functionary and in case he fails to discharge his duties as such, the

petitioner cannot be made to suffer. The matter involved in this writ petition is that Shri Daulat Ram, who is filing this petition as the next friend of the petitioner deity is an old man aged about 80 years and he had been keeping bad health and remained seriously ill for the last about three years and, therefore, he could not bring this petition earlier. Hence in order to safeguard the interest of the deity who is a minor he had brought this petition for Setting aside the order of the District Judge and the delay was because of his protracted illness. As the limitation for filing the appeal had expired and the matter involved is of substantial and far-reaching effect, this petition under Article 227 of the Constitution of India was necessary in the interest of justice.

4. The respondent put in his return and it was averred that the petition is not competent as the petitioner allowed the time for appeal to the District Judge and the High Court to expire. The respondent, therefore, merely contested the petition on the ground of delay and laches as also on the ground that there was an alternative remedy by way of a suit under the Abolition Act.

5. It is not disputed that it is obligatory on the State Govt. to give rehabilitation grant as envisaged under Section 27 (5) of the Act to small land-owners, whose right, title and interest have been extinguished and who do not have any other means of livelihood. The petitioner is a deity and its position is that of a minor find in case of an application against himhis interest has got to be protected by a guardian-ad-litem, and, in case any action is to be taken on his behalf then that must be taken by the next friend. In the instant case the application was brought by Sarvshri Daulat Ram and Mohan Lal as the Managers of the Devta. But the objection was that application was not maintainable because there was some District Temple Committee presided over by the Deputy Commissioner which was the competent authority who could bring such action on behalf of such deity within the district. But the fact remains that a small land-owner is entitled to rehabilitation grant from the State Government. The learned Advocate-General appearing for the respondent could not show as to how and when this temple committee was appointed. There is only a note appended to Rule 4 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms (Manner of Determination and Sanction of Rehabilitation Grant) Rules, 1965 (hereinafter referred to as the Rules)

which says-

'Application on behalf of and for any Trust/Endowment/Religious or Charitable Institution will be made by the President of the Trust/Endowment the District Temple Committee constituted under any law or custom in practice.'

Rule 4 lays down the manner of applying for sanction of rehabilitation grant and this application has to be made within six months from the date of coming into force of these Rules. Assuming that the affairs of the deity are managed by the District Temple Committee of the District yet it is the duty of the Committee to take appropriate action in time to protect the interest of the deity. But the Committee slept over the matter. The learned Advocate-General took time to seek instructions from the Deputy Commissioner whether he was prepared to make an application for sanction of the rehabilitation grant to the deity in his capacity as the President of the Temple Committee of the district, if there was any. But on the next date, the Advocate-General stated in the Court that the Deputy Commissioner was not prepared to take any responsibility, which means that he himself is not aware whether there is any District Temple Committee and if there was any, he should not have shirked in his duty to protect the interest of the deity, who is a minor. Therefore, in my opinion, it was the Manager or the Kardar who had been appointed by the worshippers of the temple, who were the competent persons to make an application to the Compensation Officer for the determination of the rehabilitation grant and to determine whether he was really entitled to the grant. In this behalf, I am supported by Bishwanath v. Radha Ballabhiji, AIR 1967 SC 1044, which says that when such an alienation has been effected by the shebait acting adversely to the interest of the idol, even a worshipper can file the suit, the reason being that the idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest.

6. However, the contention raised by the learned Advocate-General is that the petitioner had an alternative remedy under Section 92 of the Act by way of a suit. But a plain reading of the section would reveal that no suit can be filed by a small land-owner for the sanction of the rehabilitation grant on the investment of his

property in the State Government. So the only remedy was by way of an application and which application could be made by the persons who were the properly appointed Managers and the Kardars by the worshippers of the Devta and there is no dispute that Shri Daulat Ram was the Kardar of the Devta.

7. The petitioners had appealed to the District Judge but the appeal was barred by nine days and the right of further appeal to the High Court was also lost because of the circumstances as mentioned by the petitioner in paragraph 8 of his petition that the Kardar Shri Daulat Ram is an aged person of 80 years and he had been ailing for the last about three years and was confined to his bed. He had been asking other persons to take further proceedings in the matter but nobody came forward for the purpose. He had been able to come to Simla with great difficulty in the third week of July, 1970, and then he had to apply for the requisite copies of the order of the learned District Judge as also of the learned Compensation Officer. Hence that was the cause of the delay in filing the petition. It was the question of the valuable rights and which rights were those of a minor and the interest of the minor could not be made to suffer because of the negligence and disregard by the Deputy Commissioner of his duties. If Shri Daulat Ram after he had recovered took effort to protect the minor's interest then in my view this delay which had been fully explained should not be taken to defeat the valuable rights of the minor. The learned Advocate-General has relied upon Durga Prasad v. Chief Controller of Imports and Exports, AIR 1970 SC 769 to show that in case of delay 'It is well settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches,and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard

and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour ef a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.' This authority does not apply to the facts of this case. In the instant case it is the interest of the minor which should not go unprotected and for the protection of the interest of the minor it is expedient that the delay should not stand as a bar to defeat his rights as already stated, when the delay has been sufficiently explained. The other authorities relied upon by the learned counsel are also to the similar effect

8. Further it would be apparent that the Compensation Officer is a tribunal very much analogous to a Civil Court and the High Court therefore, under Article 227 of the Constitution would be within its power to keep the Compensation Officer within the bounds of his jurisdiction and this Court has the power and duty of Superintendence over him under the aforesaid Article and this superintendence and control can be exercised even though the appeal to the learned District Judge was barred by time. There is no rule of limitation fixed for preferring of an application under Article 227. It is, however, true that the party who wants to go to the Court must do so as expeditiously as possible and the mere fact that the petitioner has come very late is no ground of throwing out the petition when it is proved to the satisfaction of the Court that the tribunal has failed to rightly exercise the jurisdiction that vested in it and here as already stated the idol is a minor and his interest has got to be protected. The stand of the respondent was that it was the District Temple Committee which was the competent authority. But the District Temple Committee failed in its duty to protect the interest of the minor and, therefore, the Kardar was the proper person to take steps for safe-guarding the interest of the minor for the sanction of the rehabilitation grant to which he was entitled under Sub-section (5) of the Section 27 of theAct. Even at the last stage when the learned Advocate-General stated that he would ask the Deputy Commissioner that he should take necessary steps he submitted that he was not prepared to take the responsibility which means that he is not keen to protect the interest of the minor which the Court should see are protected and for that purpose this remedy should be afforded to the petitioner. Consequently the writ petition is

allowed and the orders of the Compensation Officer as also of the District Judge are set aside with the result that the case is remitted to the Compensation Officer through the District Judge for proceeding with the case further. No orders as to costs.

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