

Qazi Moinuddln and ors. Vs Union of India and ors.

Qazi Moinuddln and ors. Vs Union of India and ors.

SooperKanoon Citation : sooperkanoon.com/904372

Court : Delhi

Decided On : Oct-06-2010

Judge : Mr. S. Muralidhar, J.

Appeal No. : W.P.(C) 5524/2003

Appellant : Qazi Moinuddln and ors.

Respondent : Union of India and ors.

Advocate for Def. : Mr. Sachin Datta , Mr. Manikya Khanna, Advs.

Advocate for Pet/Ap. : Mr. Anup G. Chaudhari, Ms. June Chaudhari, Mr. Ashok Mathur, Advs.

Judgement :

ORDER

1. The prayer in this writ petition by five residents of District Dhar in Madhya Pradesh is for quashing for a direction contained in Clause 3 of the decision dated 7th April 2003 of the Directorate General of the Archaeological Survey of India (ASI) at New Delhi concerning entry into the monument at Bhojshala, District Dhar, Madhya Pradesh.

2. In the writ petition the justification for approaching the High Court of Delhi by five residents of District Dhar in Madhya Pradesh, in relation to entry into a monument located also in Madhya Pradesh, is that the Respondent ASI, whose

decision is under challenge, is located within the territorial jurisdiction of this Court.

3. Mr. Anup Chaudhari, learned Senior counsel appearing for the Petitioners pleaded that under Article 226(1) of the Constitution, as explained by the Constitution Bench of the Supreme Court in *Lt. Col. Khajoor Singh v. Union of India* AIR 1961 SC 532, a writ petition brought forth by a person before a High Court within whose jurisdiction the authority whose decision is under challenge is located cannot be declined to be entertained on the ground of *forum non conveniens* i.e. on the ground that it would be more convenient or appropriate for the writ petition to be heard by some other High Court. It is urged that a petitioner is the *dominus litus* and is free to choose which Court to approach with a writ petition as long as requirements of Article 226(1) of the Constitution are satisfied. It is submitted that where Article 226(1) is attracted, there is no need to examine whether for the purposes of Article 226(2) any part of the cause of action arises within the jurisdiction of this Court. Reliance is placed on the certain observations of the Supreme Court in *Eastern Coalfields v Kalyan Banerjee* 2008 3SCC 456.

4. The above submissions, though attractive, do not merit acceptance in the facts and circumstances of the present case. It appears that the same impugned order dated 7th April 2003 was challenged before the High Court of Judicature at Jabalpur in Writ Petition (Civil) No. 4716 of 2003 titled *Qazi Zakaullah v. State of Madhya Pradesh*. By a detailed judgment dated 18th September 2003 the learned Single Judge of that High Court declined to entertain the writ petition on the ground that "investigation has to be made in a properly constituted civil suit not in a writ petition.". Consequently, the parties were relegated to the civil court with the clarification that no observation in the judgment of the High Court would influence the determination of the issues by the civil court. It is stated that the said judgment has been challenged by way of appeal which is pending consideration before a Division Bench of the High Court of Madhya Pradesh.

5. It appears to this Court that when the impugned order challenged in this writ petition has been made the subject matter of challenge before another High Court, and a decision has been rendered by a learned Single Judge of that High Court, which is pending consideration before a Division Bench of that Court in appeal, it

would not be appropriate for this Court to entertain a similar challenge to the very same impugned order. If entertained, this petition would lead to multiplicity of the proceedings and the possibility of inconsistent orders, both of which eventualities are best avoided.

6. Consequently, this writ petition is not entertained and is dismissed as such leaving the Petitioners to seek other appropriate remedies as may be available to them in law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com