

Court No. - 32

Case :- WRIT - C No. - 13703 of 2018

Petitioner :- Acharya Pramod Krishnam Ji Maharaj

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Roopesh Tewari, Abhiuday Mehrotra, Shailendra, Subhanshu

Counsel for Respondent :- C.S.C.

Hon'ble Salil Kumar Rai, J.

Hon'ble Surendra Singh-I, J.

Heard the counsel for the parties.

The facts of the case are that a *Kalki Mahotsav* is held in Village Achora Kambo, Tehsil and District Sambhal (hereinafter referred to as, 'Village'). The petitioner claims himself to be a reputed Hindu Saint and also claims that he has been declared as *Peethadhishwar* of Sri Kalki Dham which is in the Village. The petitioner claims that he is involved in movements for national integration and has been performing the Kalki Mahotsav at Kalki Dham which, he states in the writ petition, to be a historical, religious and spiritual programme.

The petitioner has purchased certain properties in the village and had planned to lay the foundation of Kalki Dham Temple in the village on 7.11.2016. It appears that a representation was made by one Inamur Rahman Khan claiming himself to be the National President of Muslim Kisan Union that the foundation laying ceremony of the Temple would be opposed by the Muslims. A similar report was also submitted by the Deputy District Magistrate, Sambhal to the District Magistrate, Sambhal who, apprehending breach of peace due to opposition by a religious community to the foundation laying ceremony, vide his order dated 6.11.2016 restrained the petitioner from making any

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constructions or laying the foundation of the Temple without obtaining permission from the district administration. Consequently, the petitioner could not lay the foundation stone of the Temple on 7.11.2016. The petitioner claiming that the order dated 6.11.2016 was passed *ex parte* and without giving any opportunity of hearing to him filed Writ – C No. 38652 of 2017 (Acharya Pramod Krishnam Ji Maharaj vs. State of U.P. & 4 Ors.) praying to quash the order dated 6.11.2016 and also for a mandamus commanding the officers of district administration to allow the petitioner to construct the Temple and to lay the foundation stone of the *Garbh Grih* of the Temple. Writ – C No. 38652 of 2017 was disposed of by this Court vide its order dated 25.8.2017 permitting the petitioner to move an application before the District Magistrate for recall of the order dated 6.11.2016. The petitioner filed an application for recall of the order dated 6.11.2016 which has been dismissed by the District Magistrate, Sambhal vide his order dated 30.10.2017. The present petition has been filed praying to quash the order dated 30.10.2017 and for a mandamus restraining the respondents – officers of the State and district administration from interfering in the construction and functioning of the Temple at Kalki Dham.

The reasons for rejecting the application of the petitioner for recall of the order dated 6.11.2016 as noted in the impugned order dated 30.11.2017 are :-

1. Sambhal is a communally sensitive area and the construction of the proposed Temple is being opposed by a religious group which may disturb the law and order in the area. It has been further noted in the impugned order that one Dr. Shafeequr Rahman Burq, a former member of Parliament, had made a complaint to the Chief Minister, Uttar Pradesh that the establishment of the Temple is a

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new tradition and, therefore, it should not be permitted because the persons belonging to his community have not been permitted to repair their places of worship on the ground that it would be a new tradition. It has been noted in the order that the constructions of the Temple would disturb public order and therefore, the petitioner cannot claim Freedom of Religion under Articles 25 and 26 of the Constitution of India.

2. The plots on which the Temple is to be constructed are near State lands (Plot Nos. 283, 451 and 452) because of which the State land would be encroached by the people who would come for *Darshan* at the Temple and would require space to park their vehicles.

3. A masjid exists within 144 meters from the plots on which the Temple is to be built.

4. A historical Kalki Mandir already exists at a distance of 20 Kms. from the village.

5. The plot on which the Temple is to be constructed is not accessible from any public road and there is no place for parking of vehicles or to make arrangements for any medical emergency.

6. The report of the Local Intelligence Unit indicates that the petitioner intends to construct the Temple only to encroach upon and take illegal possession of almost 20 to 25 bighas of State land.

7. The map of the Temple has not been sanctioned by any regulatory authority and the Zila Panchayat, Sambhal or the Nagar Palika have not framed any bye-laws to regulate the sanctioning of maps for any proposed construction.

At this stage, it would be relevant to note that in the counter affidavit filed on behalf of respondent no. 4, it has been stated that

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the bye-laws of the Zila Panchayat, Sambhal were framed on 2.6.2018 and they have also been published in the Uttar Pradesh Gazette.

It is also relevant to note that it is not denied by the respondents that the petitioner is the owner of the plots on which the Temple is proposed to be constructed.

Challenging the order dated 30.10.2017, the counsel for the petitioner has argued that petitioner had the right to construct Temples on his plots and the said right of the petitioner is protected by Articles 25 and 26 of the Constitution of India. It was argued that the orders dated 6.11.2016 and 30.10.2017 violate the Freedom of Religion of the petitioner as granted by Articles 25 and 26 of the Constitution of India. It was further argued that there is no evidence for concluding that there would be a breach of peace or that the public order would be disturbed in case a Temple is constructed on the plot of the petitioner. It was also argued that there is no evidence that the petitioner intends to illegally occupy any State land or to use it for the purposes of Temple. It was argued that the order dated 30.10.2017 is based on presumptions and there is no evidence in support of the facts and reasons stated in the said order to restrain the petitioner from constructing a Temple on the plot. It was argued that for the aforesaid reason, the order dated 30.10.2017 is contrary to law and liable to be quashed.

Rebutting the arguments of the counsel for the petitioner, the Standing Counsel has supported the reasons given in the order dated 30.10.2017 and has argued that the order dated 30.10.2017 has been passed on the basis of the reports given by the Local Intelligence Unit and the police department that the construction of the Temple would disturb the communal peace and consequently,

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would affect the public order. It was also argued that the order dated 30.10.2017 is based on material available to the District Magistrate and the findings recorded by the District Magistrate in his order dated 30.10.2017 are findings of facts which are not amenable to interference by this Court under Article 226 of the Constitution of India. It was argued that for the aforesaid reasons, the writ petition lacks merit and is liable to be dismissed.

I have considered the submissions of the counsel for the parties.

Before proceeding further, it would be relevant to note that the counsel for the petitioner has stated that the petitioner would submit the map of the proposed Temple before the Zila Panchayat, Sambhal for sanction and approval. However, the counsel for the petitioner has pleaded that the observations made by the District Magistrate in his order dated 30.10.2017 would prevail upon the Zila Panchayat to reject the map submitted by the petitioner and, therefore, a decision on the legality of the order dated 30.10.2017 is required.

There is no dispute regarding the title of the petitioner over the plots on which the proposed Temple is to be constructed. It is not the case of the administration or any person that the petitioner has illegally encroached or has illegally acquired the plots. The plots are not State lands. It is not the case of the administration or of any religious group that the religious beliefs of the petitioner insults the religious or personal sensitivities of any person or community. So far as public order is concerned, the only ground stated in the order dated 30.10.2017 is that certain leaders of another religious community had informed the administration that the construction of the Temple was a new tradition and would be opposed by their community. There is nothing on record to show that any

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substantial section of the muslim community was opposed to the construction of Temple. Mere construction of a Temple by any person on his private property cannot offend the religious sensibilities of any other community. It is not the case of the administration that persons of other religious community had protested against the construction of Temple, the foundation of which was to be laid on 7.11.2016. The right of the petitioner to construct a Temple on his private property is protected by Articles 25 and 26 of the Constitution and there is no evidence that the construction would have disturbed public order or was against morality or would be inimical to public health. As noted earlier, there is nothing on record to show that the petitioner by constructing a Temple intended to insult any other religious community and mere objection by few persons belonging to other religions cannot be a ground to restrict the rights guaranteed under Articles 25 and 26 of the Constitution of India. Further, the mere fact that a Masjid exists at a distance of 144 meters from the plot on which the Temple is proposed to be built by itself cannot raise an apprehension that communal peace or public order would be disturbed if a Temple is built on the plots. Any act by any person of either community which could disturb communal peace, social harmony or public order in the area after the construction of temple has to be controlled by the district administration exercising its powers under the Code of Criminal Procedure, 1973 including the powers under Section 144 of the Code of Criminal Procedure, 1973. It is the duty of the administration to protect the fundamental rights of the citizen and in this case, the petitioner also has the right to use his property in a manner which is not prohibited by law. It is noted in the order dated 30.10.2017, that the administration was informed that persons of other religious

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community were opposed to the construction of the temple because the administration had not granted permission to that religious community to renovate or repair its places of worship. The said fact, even if true, cannot be a valid ground to oppose the exercise of fundamental rights by the petitioner though it could be a ground to plead arbitrariness by the administration against the said religious community. There is no evidence on record and no such evidence has been filed with the counter affidavit to indicate that public order would be disturbed if the temple is constructed on the plots of the petitioner and apparently the District Magistrate has considered irrelevant factors to reject the application of the petitioner and restrain the petitioner from constructing a temple over his plots.

So far as the opinion of the District Magistrate that because the plots on which the temple is to be constructed is adjacent to or near State lands and, therefore, the construction of Temple may cause encroachment over State lands is also fallacious. It is the duty of the State to protect its property from encroachment and it would be for the Zila Panchayat to consider as to whether sufficient space for different facilities including parking of vehicles and holding other functions in the Temple is provided by the petitioner if the map is submitted for approval by the Zila Panchayat. Only because the plots on which the Temple is proposed is near State lands is not, by itself, sufficient to conclude that the petitioner intends to encroach upon the State land.

Apparently, the order dated 30.10.2017 of the District Magistrate is based on presumptions and surmises.

The counsel for the petitioner has stated that the map of the temple shall be submitted before the Zila Panchayat for approval. Clause -

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32 (Ga) of the Bye-laws of the Zila Panchayat provides that any construction of a religious nature shall not be permitted, in case, the said construction hurts the religious sensitivities of any other community or the proposed construction is a source of annoyance and has adverse effect on people residing within its vicinity. The bye-laws also provide for the minimum requirements to be fulfilled before a map is approved by the Zila Panchayat. The other grounds stated in the order of the District Magistrate regarding parking of vehicle, sufficient space for religious congregation or medical emergency and access to roads shall be considered by the Zila Panchayat while considering the map submitted by the petitioner. However, the observations of the District Magistrate in his order dated 30.10.2017 regarding public order or the intention of the petitioner to encroach upon the State lands shall not be binding on the Zila Panchayat while considering the map of the petitioner. It is clarified that the Zila Panchayat shall pass appropriate orders on the map submitted by the petitioner strictly in accordance with its bye-laws and without being persuaded by the observations of the District Magistrate made in his order dated 30.10.2017.

With the aforesaid observations, the writ petition is ***disposed of***.

Order Date :- 9.8.2023

Satyam