

Mahant Bal Dass

Vs

State of Himachal Pradesh and Another

Civil Appeal No. 1692 of 1987

(A. P. Sen, B. C. Ray JJ)

03.08.1987

ORDER

1. Special leave granted. Arguments heard.

2. The facts, in brief, are these. The appellant Mahant Bal Dass had filed a petition under Article 226 of the Constitution in the High Court challenging the constitutional validity of the Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments Act, 1984 insofar as it purports to include at serial No. 10 of Schedule I of the Act, the religious denomination or a stall known as Mandir Damtal at Damtal, District Kangra as being one of the Hindu public religious institutions and charitable endowments specified therein governed by the Act on the ground that the said temple is not a 'charitable endowment' within the meaning of the said Act. The High Court (P. D. Desai, C.J. and R. S. Thakur, J.) dismissed the writ petition and observed :

In view of the decision of the Supreme Court in Panipat Woollen and General Mills Co. Ltd. v. Union of India [(1986) 4 SCC 368], the principle wherein laid down must apply with equal force to the case in hand, the petitioner is relegated to the alternative remedy available to him by way of a civil suit to seek the appropriate relief.

3. Shri Soli Sorabjee, learned counsel for the appellant contends that the judgment of this Court in Panipat Woollen & General Mills case [(1986) 4 SCC 368] does not lay down that the Appellant should be relegated to the alternative remedy available to him by way of a civil suit and that the decision of the High Court proceeds on a complete misunderstanding of the ratio of that decision. There is, in our view, considerable force in the submission. The decision in Panipat Woollen & General Mills case [(1986) 4 SCC 368] does not lay down any such proposition. On the contrary, the court has held that there was no finality or conclusiveness attached to the legislative determination of an undertaking as a sick textile undertaking specified in the First Schedule to the Sick Textile Undertakings (Taking over of Management) Act, 1972 and it was always open to the owner of such an undertaking to challenge such inclusion or takeover. This is evident from the following passage from the judgment delivered by this Court : (SCC p. 374, para 9)

If any undertaking which has been so specified in the First Schedule does not satisfy the tests under Section 2(d) of the Takeover Act, the owner of it is entitled to challenge such inclusion or takeover in a court of law, although such challenge has to be founded on a strong ground. Thus, there is no finality or conclusiveness in the legislative determination of an undertaking as a sick textile undertaking.

4. We respectfully agree with the above observations as laying down the correct law. If the appellant

is entitled to challenge such inclusion or takeover in a court of law that would necessarily take in proceedings under Article 226 of the Constitution. The writ petition was therefore competent and the High Court should have dealt with the questions raised unless it involves a question of title which depends upon adjudication of rights or raises disputed questions of fact.

5. Learned counsel for the appellant contends that the appellant was entitled to challenge the constitutional validity of the Act as also the inclusion of the said temple as being one of the Hindu public religious institutions and charitable endowment within the meaning of Section 2(7) of the Act. He drew our attention to an earlier decision rendered by District Judge, Hoshiarpur and Kangra Districts dated January 31, 1940 on an application under Section 4 of the Charitable and Religious Trusts Act, 1920 holding that the Thakardwara was not a trust created or existing for a public purpose of a charitable or religious nature within the meaning of the said Act and contends that there is a finality attached to that decision. He submits that the decision reached by the District Judge in that proceeding was deemed to be an 'action taken' within the meaning of clause (a) of Section 35 of the Act and therefore the said temple could not be governed by the provisions of the Act.

6. The contention to the contrary of Shri A. K. Ganguli, learned counsel for the respondents, is that the High Court was justified in declining to entertain the writ petition as it essentially involves a mixed question of fact and law, namely, whether the said temple was a public trust. He submits that it would clearly be not in the public interest for the High Court to entertain the writ petition as large properties endowed to the temple and compensation amount to the tune of over a crore of rupees are in deposit towards compensation payable to the said temple for acquisition of lands attached to it. The learned counsel relies upon the decision of this Court in *New Satgram Engineering Works v. Union of India* [(1981) 1 SCR 406, 416 : (1980) 4 SCC 570 at 577, para 18 : AIR 1981 SC 124] that in a case where there is a dispute of title depending upon adjudication of rights, the party aggrieved should be relegated to the ordinary remedy of a suit. We refrain from going into the question as to whether the decision in *New Satgram Engineering Works* case [(1981) 1 SCR 406, 416 : (1980) 4 SCC 570 at 577, para 18 : AIR 1981 SC 124] is attracted to the facts and circumstances of the present case. That is essentially a matter for the High Court to determine. We are, however, satisfied that the High Court could not have relied upon the decision in *Panipat Woollen & General Mills* case [(1986) 4 SCC 368] and dismissed the writ petition at the very threshold on the ground that in such a case a writ petition could not be entertained.

7. In the result, the appeal succeeds and is allowed. The judgment and order of the High Court dismissing the writ petition in limine are set aside and the High Court is directed to dispose of the writ petition as expeditiously as possible, along with Civil Suit No. 44 of 1984. The High Court should proceed to deal with the writ petitions unless the matter was of the kind indicated in *New Satgram Engineering Works* case [(1981) 1 SCR 406, 416 : (1980) 4 SCC 570 at 577, para 18 : AIR 1981 SC 124] i.e. it raises a question of title which cannot be determined without an adjudication of rights on taking of evidence. It would be for the High Court to deal with the contention upon its merits.

8. There shall be no order as to costs.

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