

Sree Jain Swetambar Terapanthi Vid (S)

Vs

Phundan Singh

Civil Appeal No. 730 of 1999

(K. T. Thomas, S. S. Mohammed Quadri JJ)

09.02.1999

JUDGMENT

S. S. Mohammed Quadri J

1. Leave is granted. The appeal is directed against order of the Division Bench of the Calcutta High Court in FMAT No. 438 of 1998 dated 18th September, 1998. The plaintiff in the suit, out of which this appeal arises, is the appellant.

2. The appellant is a society, registered under the Societies Registration Act, established some time in 1916 by certain families of Jain community for preservation of its culture, heritage, religious philosophy etc. and for imparting modern commercial, physical and religious education according to the tenants of Jain Swetambar Terapanthi religion to the children of the community [hereinafter referred to as 'the Society']. There is also another organisation of the Jains, namely Jain Swetambar Terapanthi Mahasabha, of the same religious community. These two are rival organisations. In this appeal, we are concerned with the Society which is managing four schools - these Girls schools and one Boys school.

3. The Society appointed Phundan Singh [Respondent No. 1] as Headmaster of the Boys school in 1993. The executive committee which is now running the Society was voted to office and accordingly it assumed charge on December 24, 1994. On October 3, 1995, Respondent No. 1 attained the age of superannuation, sixty years, but by a resolution of Joint Meeting of Executive Committee and Board of Trustees, his services were extended for a period of one year. Again, on October 4, 1996, the services of the first respondent were extended for a second term of the one year expiring on October 3, 1997.

4. On the allegation that Respondents No. 2, 4 to 6 and some others were indulging in activities harmful to the Society as well as the school, their membership was terminated by a resolution adopted by the Society on July 13, 1996. It appears that six suits were filed challenging the resolution terminating the membership and out of them suits filed by Respondent No. 2 and others were dismissed; the suit filed by the fourth respondents is pending.

5. While so, on April 26, 1997, the first respondent was served with the order of termination of his services on the ground that he joined the camp of the expelled members and that on April 25, 1997 he trespassed criminally in the Boys school premises along with members of Mahasabha, broke open padlocks of Conference Room and other rooms and took away some important documents, valuable records, etc. of the Society. It is also mentioned that the said records etc. were recovered from the rooms of the rival organisation.

6. The third respondent who was appointed as the Teacher in-charge of the Boys school faced difficulties in running the school on account of the alleged interference of the first respondent and others, so he filed a Title Suit No. 1197 of 1997 against the said persons and sought injunction restraining them from interfering in the functioning and the administration of the Boys school on 9th May, 1997. Though the Division Bench set aside that order on technical ground, yet it was restored after remand by the Trial Court on November 29, 1997.

7. The Society also filed Title Suit No. 1779 of 1997 in the court of second Judge, City Civil Court, Calcutta against the respondents herein claiming, inter alia, declaration that the first respondent ceased to be the Assistant Teacher and Headmaster of the Boys school; that Respondents No. 2 and 4 to 6 ceased to be the members of the Society; and the fifth respondent ceased to be the member of the Executive Committee of the Society. It also sought temporary injunction restraining them from entering into school premises and causing any interference in the functioning of the school. On January 29, 1998, the Trial Court granted the injunction sought for by the Society. The respondents filed the appeal against that order. On 18th September, 1998, a Division Bench of the Calcutta High Court set aside the order of injunction granted by the Civil Court, appointed two Joint Administrators in place of the Society's Managing Committee/Trust issued certain consequential directions and thus disposed of the appeal. It is the validity of that order that is assailed in this appeal.

8. Mr. Dipankar Gupta, learned senior counsel appearing for the appellant, vehemently argued that the High Court has gravely erred in setting aside the order of the Civil Court by wrongly observing that the trial Judge could not have granted the injunction without finding that plaintiff has made out a prima facie case. He contended that the High Court went for beyond its jurisdiction by appointing joint administrators to manage the society and the schools which is beyond the scope of the suit.

9. We have perused the order of the High Court under appeal as well as the order of the Trial Court. The High Court observed that (i) the trial court perhaps did not apply its mind properly or carefully to the important aspect of the matter and yet in the absence of any prima facie case having been established by the respondent in this suit, granted temporary injunction in favour of the plaintiff and passed the order of restraint against the respondents, including the appellants before it; (ii) valuable right of the defendants relating to the holdings of offices were under adjudication before the trial Court and yet without prima facie coming to even a provisional conclusion as to whether they had ceased to hold such office the temporary injunction was granted; and (iii) the trial court did not even satisfy about the correctness of the claim of the plaintiffs in this suit or for that matter, the person claiming to be the Secretary of the Society.

10. Having gone through the order of the trial court dated January 29, 1998 we noticed the following findings :

(1) "It has been alleged by the contesting Ops that LP Manot who has verified the plaint has since been expelled from the secretaryship, but on perusal of the documents at present the said allegation cannot be accepted.....The rules and regulations and special rules of the petitioner have also been challenged by the contesting Ops but I find nothing to accept the said allegation at this stage.

(2) The service of OP No. 1 as headmaster was terminated by resolution of the Executive Committee of petitioner. That OP claims that he is still the headmaster. I find from the materials on record that his service as headmaster was terminated and

OP No. 6 was appointed teacher-in-charge to discharge the functions of the headmaster. At present there is nothing to suggest that there is substance in the said claim of OP No. 1. It has been submitted before me on behalf of petitioner that in a suit being TS No. 1197 of this Court which was instituted by OP No. 6 at present before us, that OP No. was injunctioned and the said order of injunction passed by this Court recently was confirmed by the Hon'ble Court. The said submission has not been disputed from the end of the contesting Ops. On perusal of the materials before us in this case I am of the opinion that there are prima facie materials to substantiate the allegations made against OP No. 1.

(3) Regarding OP No. 2 to 5 they have since been suspended/expelled by resolution of the Executive Committee of petitioner. There is nothing to suggest that the said suspension/expulsion has been set aside by any competent authority. On perusal of the materials before us I am of the opinion that there is prima facie case against them."

The trial court further recorded the finding :

"Petitioner has been successful, in my opinion, to establish the prima facie cases in its favour. I am of the opinion that if the order of temporary injunction, as prayed for, is not passed the interest of petitioner as well as students, staff and guardian will be adversely affected in view of the fact that the allegation against OP Nos. 1 to 5 which have been established prima facie are very serious. In view of that I am inclined to allow the instant petition for temporary injunction."

11. It may be pointed out that it is one thing to conclude that the trial court has not recorded its prima facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that trial Court has gone wrong in recording the prima facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. In the first situation, the appellate Court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding. The High Court proceeded to set aside the order of the trial court on the first ground ignoring the afore-mentioned findings of the trial court, the order under appeal is, therefore, unsustainable.

12. Faced with this situation, learned senior counsel, Mr. R.K. Jain, appearing for Respondents No. 1 and 2, Dr. Abhishek M. Singhvi, appearing for Respondent No. 4 pleaded that if the matter has to go back to the High Court for fresh consideration, the status quo may be maintained. However, Mr. Sanyal, learned senior counsel who appeared for the fifth respondent did make an attempt to support the order of the High Court. But for the reasons stated earlier, we are unable to accept the contention of Mr. Sanyal.

13. However, all the learned senior counsel for respondents pleaded that during the interregnum the order of the High Court appointing two joint administrators to take charge of the society and/or trust in the place of the Managing Committee and the directions issued to them in regard to the management thereof may not be disturbed till the High Court decides the matter afresh. In support of the said contention, they relied on the following judgments: *Municipal Board, Pratabgarh and another v. Mahendra Singh Chawla and others*, 1982(3) SCC 331; *Chandra Bansi Singh and others*

v. State of Bihar, 1984(4) SCC 316 and Sadhuram Bansal v. Pulin Behari Sarkar and others, 1984(3) SCC 410.

14. In *Municipal Board, Pratabgarh and another v. Mahendra Singh Chawla and others*, an employee of the Municipal Board was dismissed from service on the ground of being convicted of offence involving moral turpitude, taking illegal gratification. However, having considered the efficiency, capability and experience, he was appointed afresh by the Municipal Board. The Local Self Government Department directed the Board to terminate the services of the employee and accordingly he was served with the order of termination. He challenged that order of termination in the suit which was dismissed by both the trial court as well as the appellate Court. In the second appeal, the High Court decreed the suit holding the fresh appointment as reinstatement with continuity of service and the order of termination bad in law. On special leave, this court held that the judgment of the High Court on the question of law was erroneous but having regard to the circumstances of that case, observed that it would meet the ends of justice if the termination order be ignored and he be allowed to continue in service.

15. In *Sadhuram Bansal v. Pulin Behari Sarkar and others*, what happened was that the court receiver sold the property in question which was in the occupation of trespassers, thirty eight families, who had made pucca constructions thereon. The receiver sold the property by private negotiations with the permission of the court. Though the offer amount was accepted by the receiver, the balance of the sale consideration was not paid within time. The purchaser obtained orders for the summary eviction of the respondents-occupiers of the land. On the applications of respondents, Section 145 Cr.P.C. proceedings were initiated and they were pending. The respondents offered one lakh rupees more than the sale consideration agreed to by the purchaser. Though the learned single Judge of the High Court rejected the offer of the respondents, the Division Bench accepted the offer on the ground that there was no concluded contract with the purchaser and to do social justice as it would save eviction of thirty eight families from their houses. On special appeal, this Court observed that by its judgment the High Court got more money for the owners on the one hand and on the other sought to rehabilitate the thirty eight families of the respondents who had already built permanent structures and were in actual possession and hence there would be no further litigation and difficulty in acquiring the ownership without deprivation of existing legal rights of any party concerned, so on the facts of the case, in exercise of its discretionary jurisdiction under Article 136, it would not interfere with the order which promotes social justice.

16. In *Chandra Bansi Singh and others v. State of Bihar and others*, the lands of the appellant were acquired by issuing notification under Section 4(1) of the Land Acquisition Act. In view of the litigation between the appellants and the Governments, the possession of the land could be taken only after two years. While holding that the price of the land should be determined under Section 23 of the Act not on the date of taking possession but on the date of Section 4(1) notification, this Court granted additional compensation in equity in the form of interest @ 7-1/2 per cent per annum for two years on the value of the land owned by the appellants, though they were not entitled to that relief under law, taking the view that the Supreme Court is not only the court of law but also of equity.

17. From the above discussion, the principle that emerges is that where the High Court has granted some relief by way of social justice or on equitable grounds without violating the rights of other parties, though in law such relief was not permissible, the Supreme Court would not interfere in its discretionary jurisdiction under Article 136 if the order under appeal advances the cause of justice

and if it is just an equitable so to do.

18. We may observe that in an adversarial litigation the relief has to be granted to the parties based on their pleadings. No relief should be granted in interlocutory proceedings beyond the scope of the suit. It may be noted that the present suit out of which the appeal has arisen was filed by the appellant-society for declaration and injunction, the suits filed by the contesting Respondents 2, 4 to 6, challenging their expulsion from the society, were dismissed except the suit of Respondent No. 4, which is pending. No material is placed before us to show that any relief is granted to him in that suit. No legal proceeding has been filed by any of the contesting respondents either under the Societies Registration Act or any other law applicable to the Society for appropriate relief in respect of the management of the society and the schools run by it. Though we share the concern of the High Court that the rival groups are fighting with each other and 60 cases are pending in various courts, in these circumstances of the case, in our view, ousting the Managing Committee from the management of the society and the schools run by it and appointing the joint administrators would neither be legal nor just and proper. The principle laid down in the afore-mentioned cases will, therefore, be inapplicable. For these reasons, we are not inclined to continue administration of society/trust by the joint administrators pending disposal of the appeal by the High Court.

19. The order under appeal is set aside and the case is remitted to the High Court for appeal filed by Respondents Nos. 1 and 2 afresh in accordance with law. The appeal is accordingly allowed with costs.