SUPREME COURT OF INDIA

Mahant Rajendra Das Vaishanav

Vs.

Gopal Das

C.A.No.5555-5556 of 2008

(R.V.Raveendran and Dalveer Bhandari JJ.)

04.09.2008

ORDER

1. Heard the parties.

2. There is a delay of 3677 days. The appellant has shown sufficient cause to condone the delay. When the decision was rendered by the High Court on 10.3.1995, an appeal was maintainable and accordingly the petitioner had filed LPA NO.47/1995 before the Division Bench of the Madhya Pradesh High Court. During the pendency of the said appeal this SCC 591 held that the LPAs were not maintainable. As a consequence, the said LPA No.47/1995 was dismissed as not maintainable on 17.8.2005 reserving liberty to the petitioner to avail other remedy available to him in law. Immediately thereafter, on 4.10.2005, the petitioner filed this present special leave petition along with an application for condonation of delay. As the petitioner was pursuing a remedy by way of an intra-court appeal in the same High Court which was subsequently held to be not maintainable, the entire period of delay has to be condoned. Accordingly, we allow I.A. No.1 of 2005 and condone the delay.

3. Leave granted. Heard parties.

4. The first respondent in Writ Petition No. 1365 of 1992 on the file of Madhya Pradesh High Court, Gwalior Bench, filed under Article 227 of the Constitution of India is the appellant in these appeals by special leave.

5. The first respondent herein had filed the said petition against the order dated 25.5.1992 passed by the Board of Revenue dismissing the Revision against the order dated 31.7.1991 passed by the Sub Divisional Officer, Sheopurkala. The said writ petition was allowed by order dated 10.3.1995. The reason given for allowing the writ petition, stated in paragraph 6 of the order of the High Court is extracted below:

> "The learned counsel for the petitioner submits that in view of the order dated 29.1.1985 passed by the Supreme Court of India, which has been modified by order dated 22.2.1985 the issue regarding Mahant Ship has been determined and no inquiry

can be held in the regard. The interpretation made by the learned counsel for the petitioner is right. The order of the Supreme Court as modified by order dated 22.2.1985 says in positive terms that Gopaldas 'has to be' appointed as Mahant. this leaves no option.

The learned counsel for the respondents has argued that the intention of the Supreme Court was that the appointment has to be made in accordance with law. This does not seen to be the intention. In view of the imperative language used in the order the intention is clear. The petitioner has to be appointed as Mahant."

6. It is thus clear that the writ petition was allowed only on the ground that this Court by its order dated 29.1.1985 (as modified by order dated 22.2.1985) had made an observation that on the death of Mahant Prashramdas, the first respondent has to be appointed as Mahant. The High Court was of the view that the order dated 29.1.1985 as modified by order dated 22.2.1985 of this Court was binding and therefore it had to merely hold that first respondent had to be appointed as the Mahant of the institution.

7. We however find that neither order dated 29.1.1985 nor the order dated 22.2.1985 of this Court adjudicated any issue, much less made any considered order that first respondent should be the Mahant. The order dated 29.1.1985 reads thus:

"It is stated by the learned Counsel for the appellants that Mahant Parashram Das has died and after his death, Gopaldas has been appointed as Mahant. This makes it unnecessary for us to go into the question raised in these appeals. No orders are therefore, passed in these appeals."

8. The order dated 22.2.1985 clarifying the order dated 29.1.1985 reads thus:

"This Court's earlier order dated January 29, 1985 is modified to the extent that instead of the words 'has been' in line 3, the words 'has to be' are substituted."

9. In the absence of any adjudication it cannot be said that there was a direction by this Court that the first respondent should be appointed as Mahant. In fact, this Court, by order dated 1.12.1995 clarified that the orders dated 29.1.1985 and 22.2.1985 were not orders deciding the issue of succession to Mahantship. The said order is extracted below:

"The order of this Court in Civil Appeal Nos. 1049 and 1527 of 1970 dated 29th January, 1985 modified by the order of 22nd February, 1985 has led to the High Court passing the impugned order stating that the meaning of this Court's order can best be interpreted by this Court itself. It also granted appellant an opportunity to approach this Court for that purpose. We have looked into the order of 29th January, 1985 modified by the order of 22nd February, 1985 and we clarify that by this the Court merely declined to interfere but did not foreclose the inquiry. The matter will go back to the High Court for further orders. The appeal will stand disposed of accordingly with no order as to costs."

10. This Court made it clear that the inquiry was not foreclosed.

11. In view of the above, it is clear that the High Court could not have allowed the writ petition without examining the matter on merits by assuming that this Court had decided the issue and nothing therefore remained for consideration.

12. We, therefore, allow these appeals, set aside the order dated 10.3.1995 passed in W.P. No.1365/1992 and remit the matter to the High Court for fresh disposal of the writ petition on merits in accordance with law.

13. Learned counsel for the first respondent submitted that the first respondent is very old, that the dispute in regard to succession has been pending for nearly five decades and the present litigation itself has been pending for more than two decades and therefore, there may be a direction to the High Court to dispose of the matter early. We find that the writ petition is of the year 1992. We are sure that the High Court will, therefore, consider and dispose of the writ petition on merits at an early date, at all events within four months from today. Learned counsel also submitted that there are two connected appeals before the High Court. It is open to the first respondent to request the High Court to take up and dispose of those appeals along with the writ petition, if they are connected appeals.