

RAJASTHAN HIGH COURT

Pujya Sindhi Panchayat

Vs.

C.L. Mishra,

D.B.C.R.P.No. 98 of 2001
(Arun Madan and Sunil Kumar Garg, JJ.)

20.03.2002

JUDGEMENT

Sunil Kumar Garg, J.

1. This review petition has been filed by Pujya Sindhi *Panchayat* (hereinafter referred to as the petitioner-Society") with the prayer that the judgment dated 8th May, 2000 passed by the Division Bench of this Court in D.B. Civil Writ Petition No. 6051/97 filed by Prof. C.L. Mishra (respondent no. 1 in this review petition) be reviewed.

2. It arises in the following circumstances:

Prof. C.L.Mishra (respondent no. 1 in this review petition) addressed a letter to Hon'ble Chief Justice M.G.Mukherjee (as he then was) on 4-11-1997 stating *inter alia* that in Malviya Nagar in Sector No.3 behind Sabzi Mandi adjacent to Bagla Mukhi Sadhna Kendra, two residents of Malviya Nagar, namely, Shyam Lal Gulani and Hargun Dass Motwani, who are respondents No. 5 and 6 respectively in this review petition, were constructing building on 1000 sq. yards plot left for park without any site plan or allotment. It was further alleged in that letter that the respondents No.5 and 6 of this review petition had dug a foundation of 72 yards in length, to make further construction and they were trying to instal idols on 11th November, 1997 to cover up their illegal encroachment and construction and by doing so, they wanted to grab the park land. It was further alleged in that letter that information about the illegal encroachment and construction made by the respondents no. 5 and 6 of this review petition over the plot left for park was sent to the Rajasthan Housing Board (respondent No. 3 in this review petition), *Jaipur* Development Authority and Municipal Corporation (respondent No. 2 in this review petition). Thus, it

was prayed in that letter that Rajasthan Housing Board (respondent No.3 this review petition) and Municipal Corporation (respondent No. 2 in this review petition) be directed to remove all encroachments from the land adjoining the Bagla Mukhi Sadhana Kendra in Sector No. 3 Malviya Nagar, *Jaipur*, which was earmarked for park and it was further prayed that Rajasthan Housing Board (respondent No.3 in this review petition) be directed to develop the park on the said land for public use.

The said letter of Prof. C.L.Mishra (respondent No.1 in this review petition) was treated as Public Interest Litigation by this Court and it was registered as D.B. Civil Writ Petition No. 6051/97.

On 17-11-1997, notices of that writ petition were issued to the Municipal Corporation, *Jaipur* (respondent No.2 in this review petition), Rajasthan Housing Board (respondent No.3 in this review petition), Collector, *Jaipur* (respondent No.4 in this review petition), Shyam Lal Golani (respondent No.5 in this review petition) and Hargun Das Motwani (respondent No. 6 in this review petition).

A reply to that writ petition was filed by the respondents No.5 and 6 of this review petition, namely, Shyam Lal Golani and Hargun Das Motwani respectively on 3-12-1997 stating *inter alia* that Prof. C.L. Mishra, respondent No.1 in this review petition, was himself unauthorized occupant on a piece of land which was otherwise earmarked and allotted for the purpose of temple. It was further averred in the reply that Prof. C.L.Mishra was using the land of the temple Bagla Mukhi Sadhna Kendra for his own residence illegally. It was further averred in the reply that the temple was in existence for a long time and it was not a new construction and the temple existed even prior to the development and occupation of plots by people in Malviya Nagar. It was further averred in the reply that the allegations of illegal encroachment and construction over the land earmarked for public park were absolutely incorrect and false one.

The Rajasthan Housing Board (respondent No. 3 in this review petition) also filed a separate reply on 10-2-1998 stating *inter alia* that an enquiry was conducted on the basis of the letter written to the Housing Commissioner, Rajasthan Housing Board by Mahesh Rajawat and Dinesh Pooniya wherein it was submitted that in Sector-III of Malviya Nagar opposite Satkar Shopping Centre on Government land certain persons were constructing a temple and for that, an enquiry be conducted. The enquiry was conducted by the Additional Chief Engineer-II of the Rajasthan Housing Board and the report was submitted by him on 23-8-1997. It was further averred in the reply that on 21-8-1997 site was inspected and it was found that near Bagla Mukhi Sadhna

Kendra, on a piece of land a temple existed, but no work of a new construction was found. It was also noticed that the boundary wall was old and there was a gate. It was further reported in the inspection report that the premises were being maintained by the persons belonging to Pujya Sindhi Panchayat Sector No.3"(petitioner-Society). It was further averred in the reply that the premises had been shown as temple and the land adjacent had been shown as land marked for temple in the Municipal map. It was further averred in the reply that the entire piece of land including the Bagla Mukhi temple was left for being allotted to different institutions but at that time, the disputed land was not marked as land reserved for constructing temple. It was further averred in the reply that in the year 1994-95, the Municipal Corporation, *Jaipur* (respondent No.2 in this review petition) auctioned few plots for residential purposes. So far as the unauthorized construction was concerned, it was averred by the Rajasthan Housing Board that since the colony had been handed over to the Municipal Corporation, therefore, if there was any unauthorized construction, that was to be removed by the Municipal Corporation. It was further averred in the reply that the Rajasthan Housing Board had prepared a plan for Sector 3 of Malviya Nagar and the entire piece of land was marked as land for Community Centre and facilities" and that when Sector 3 of Malviya Nagar was handed over to Municipal Corporation, the land was handed over to the Municipal Corporation for Development of Community Centre and facilities but the Municipal Corporation auctioned two plots from the aforesaid land for residential purposes.

The Municipal Corporation (respondent No.2 in this review petition) has also filed reply on 9-3-1998 stating *inter alia* that since the land vested in the Government and in the Rajasthan Housing Board, therefore, Municipal Corporation could not be said to have any concern in this connection. It was further averred in the reply that on 9-11-1992, the charge of certain sectors in Malviya Nagar was handed over to the Municipal Corporation by the Rajasthan Housing Board and in that charge report, it was mentioned that the Municipal Corporation shall henceforth look after the general maintenance and upkeep of the colony which shall include the work of maintenance and repairs of road, street lights etc. Thus, it was averred in the reply that apart from the above functions, all other functions were to be performed by the Housing Board and not by the Municipal Corporation. It was further averred in the reply that the Rajasthan Housing Board had not handed over the strip of land which remained vacant in the colony or in respect of which title is in dispute and has kept all such lands in its own ownership. Thus, the Municipal Corporation denied any responsibility in the matter of removal of encroachment on such land.

On 20-1-1998, a rejoinder was filed by Prof. C.L. Mishra, respondent No.1 in this review petition.

After hearing all the parties, the Division Bench of this Court through judgment dated 8-5-2000 disposed of the writ petition filed by Prof. C. L. Mishra, respondent No. 1 in this review petition, with the following observations and directions:-

(1) That both the institutions, namely, Rajasthan Housing Board (respondent No.3 in this review petition) and Municipal Corporation (respondent No. 2 in this review petition) are shifting their responsibilities to remove encroachments though both of them are public bodies and because of their negligence, encroachments had been made on the disputed land.

(2) That whether the land in dispute is in charge of the Rajasthan Housing Board or in the charge of Municipal Corporation, it is immaterial, but it is of paramount importance for the public that it should be saved from encroachments and illegal constructions so that the land could be utilised for the purpose for which it was set apart.

(3) That the dispute between the Rajasthan Housing Board and the Municipal Corporation as to whether one has handed over possession of the land to the other or not, was not decided by this Court. However, this Court found that the Municipal Corporation admitted that the general maintenance and upkeep of the colony including the works of maintenance and repairs of road, street lighting, drains, sewer lines and general cleaning of the colony have been handed over to it by the Rajasthan Housing Board and general maintenance and upkeep of the colony shall also include saving it from unauthorised occupants and encroachers. Thus, Municipal Corporation will have ample authority to do all such things to keep the property intact for the use for which it was set part and left open. If there was any doubt about this, Rajasthan Housing Board shall hand over removal of encroachment" also to the Municipal Corporation. In any case, no person, who alleged to have encroached upon the public property, shall be allowed to take benefit of the confusion as to who between the two public bodies, was responsible for removing encroachments.

(4) That in these circumstances, this Court directed that the Municipal Corporation, *Jaipur* (respondent No. 2 in this review petition) shall be responsible for removal of encroachment from the land handed over to it for maintenance etc. by the Rajasthan Housing Board. It was further directed that completion of the formalities of completely handing over land to the Municipal

Corporation by the Rajasthan Housing Board shall also be expedited.

(5) That it was made clear that this Court did not make any observations on the factual situation and rival contentions about the existence or otherwise of the encroachment and the rights of the parties.

(6) That it was further made clear by this Court that when the Municipal Corporation takes action for removal of the encroachments, it shall naturally, in compliance with the law, afford adequate opportunity to the persons known to be in possession of the encroached portions or those who claim the encroached portions to be in their possession, before removing the encroachments.

(7) That it was further observed by this Court that the Municipal Corporation shall discharge its functions expeditiously and if it finds that the public land was encroached upon, it shall take action for removal irrespective of whether the encroachment was under the garb of temple or a place of worship. If need be, the Municipal Corporation shall also entitle to take help from the local administration in order to see that the law and order was not disturbed during the removal of encroachment.

(8) That the private respondents (respondents No.5 and 6 in this review petition) were directed to maintain status quo as to the construction on the land and they were further directed not to put up any new construction on it for a period of six months from today during which the Municipal Corporation, Jaipur shall decide whether a *prima facie* case of encroachment is made out and if it is of the opinion that the public land has been encroached upon, it shall take action for its removal by issuing the notices in compliance with law, to the encroachers and shall dispose of the matter within a period of six months from today.

Aggrieved from the said judgment dated 8-5-2000 passed by the Division Bench of this Court, the present review petition has been filed by the petitioner-Society.

3. In this review petition, it was submitted by the petitioner-Society that over the disputed land, there is a public temple and the petitioner-Society was managing all the affairs of that public temple. It was further submitted that the said public temple, which was being utilized by the public at large, was neither in the possession of the respondents No.5 and 6 nor the respondents No.5 and 6 were at all having any personal interest and on the contrary, the petitioner-Society was managing all the affairs of that temple, but Prof. C.L.Mishra, respondent No.1 in this review petition and petitioner in the writ petition, knowingly and intentionally did not implead petitioner- Society as party to the writ petition. It was further submitted that on 22-3-

2000, the petitioner-Society filed an application under Article 226 of the Constitution of India read with Order 1, Rule 10 Civil Procedure Code before this Court in the Writ petition filed by Prof. C.L.Mishra, for impleading as party to that writ petition. However, that application was not considered and decided by this Court while deciding the writ petition on 8-5-2000. Hence, it was prayed that this review petition be allowed and the judgment dated 8-5-2000 passed by the Division Bench of this Court be reviewed and the application of the petitioner-Society dated 22-3-2000 filed under Article 226 of the Constitution of India read with Order 1, Rule 10 Civil Procedure Code be allowed and the petitioner-Society be ordered to be impleaded as party to the writ petition and the matter be ordered to be decided afresh after providing an opportunity of hearing to the petitioner-Society.

4. We have heard the learned counsel appearing for the parties at length and gone through the entire materials available on record.

5. The main contention of the learned counsel appearing for the petitioner- Society is that since the petitioner-Society had already moved an application under Article 226 of the Constitution of India read with Order 1, Rule 10 Civil Procedure Code on 22-3-2000 for impleading as party to the writ petition and the same was not considered and decided by this Court while deciding the writ petition on 8-5- 2000, there fore, the judgment passed by the Division Bench of the Court dated 8-5-2000 suffers from the basic infirmity and it should be recalled and on merits, his case is that over the disputed land, there is a public temple and all affairs of that public temple were being managed by the petitioner-Society was necessary and essential party as it could bring the true facts on record in relation to the disputed land.

6. On the other hand, the learned counsel appearing for the respondents submitted that since the judgment dated 8-5-2000 passed by the Division Bench of this Court has been implemented to some extent and furthermore, contempt proceedings and other misc. matters have also arisen out of the judgment of the Division Bench of this Court dated 8-5-2000, therefore, in such situation, there is no need to review the Division Bench judgment dated 8-5-2000 and this review petition may be dismissed.

From the record, it appears that the petition-Society filed an application under Article 226 of the Constitution of India read with Order 1, Rule 10 Civil Procedure Code in the D.B. Civil Writ Petition No. 6051/97 on 22-3-2000 for impleading as party to that writ petition. It further appears that the judgment in that writ petition was reserved by the Division Bench of this Court on 16-3-2000. Thus, the application under Article

226 read with Order 1 Rule 10 Civil Procedure Code was filed by the petitioner-Society after the judgment was reserved by the Division Bench of the Court. It further appears that the said application was not considered and decided by the Division Bench of this Court while passing the judgment dated 8-5-2000 in that writ petition and that application remained pending.

Effect of pendency of application under Article 226 of the Constitution of India read with Order 1, Rule 10 Civil Procedure Code.

8. In our considered opinion, pendency of the said application under Article 226 of the Constitution of India read with Order 1 Rule 10 Civil Procedure Code, which was filed by the petitioner-society in D.B. Civil Writ Petition No. 6051/97 for impleading as party to that writ petition would have no effect and would not give any benefit or cause of action or would not create any right in favour of the petitioner-society in any manner to seek review of the Division Bench judgment of this Court dated 8-5-2000, because of the following reasons :-

(1) That after hearing the parties, the judgment D. B. Civil Writ Petition No. 6051/97 was reserved by the Division Bench of this Court on 16-3-2000.

(2) That the said application under Article 226 of the Constitution of India read with Order 1 Rule 10 Civil Procedure Code for impleading as partly to the writ petition was filed by the petitioner-Society on 22-3-2000 meaning thereby it was filed after the judgment was reserved by the Division Bench of this Court.

(3) That when once the hearing starts, the Civil Procedure Code contemplates only two stages in the trial of the suit : (1) where the hearing is adjourned or (2) where the hearing is completed.

Where hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order 20 Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It would, therefore, follow that after the judgment is reserved, there remains no stage in any case. Thus, there is no hiatus (break) between the two stages of reservation of Judgment and pronouncing it. For that, the decision of the Hon'ble Supreme Court in *Arjun Singh v. Mohindra Kumar*¹ may be referred to.

Since in the present case, the judgment was reserved by the Division Bench of this Court on 16-3-2000 and the application under Article 226 of the Constitution of India read with Order 1 Rule 10 Civil Procedure Code was filed on 22-3-2000 i.e. after the judgment was reserved, therefore, the said application would have no effect and it

would be treated as if no such application was filed before the Division Bench of this Court.

9. In view of the above, the argument that since the application under Article 226 of the Constitution of India read with Order 1 Rule 10 Civil Procedure Code was pending and that was not considered and decided by this Court while deciding writ petition on 8-5-2000, therefore, the judgment of the Division Bench of this Court dated 8-5-2000 suffers from basic infirmity and deserves to be reviewed, cannot be accepted and the same stands rejected.

10. Apart from that even on merits, because of the following reasons, we do not consider it to be a fit case for reviewing the judgment of the Division Bench of this Court dated 8-5-2000:

(1) That in the judgment dated 8-5-2000, the Division Bench of this Court did not make any observations on the factual situation and rival contentions about the existence or otherwise of the encroachment and the rights of the parties.

(2) That the Division Bench of this Court simply directed the Municipal corporation, *Jaipur* to take action for removal of encroachments and it was further directed that while taking action for removal of encroachments, the Municipal Corporation shall naturally, in compliance with law, afford adequate opportunity to the persons known to be in possession of the encroached portions or those who claim the encroached portions to be in their possession, before removing the encroachments.

(3) That the Division Bench of this Court further directed the Municipal Corporation, *Jaipur* to decide whether a *prima facie* case of encroachment is made out and if it is of the opinion that the public land has been encroached upon, it shall take action for its removal by issuing the notices in compliance with law to the encroachers.

Thus, from the above directions/observations, it cannot reasonably be inferred or gathered that the right of the petitioner-society has been affected in any manner.

(4) That since no adverse order affecting the rights of the petitioner -Society has been passed by the Division Bench of this Court, therefore, in absence of this, the petitioner-Society has no right to seek review of the judgment of the Division Bench of this Court.

(5) That since the petitioner-Society was stranger to the proceedings in D. B. Civil Writ Petition No. 6051/1997, therefore, review of the judgment passed in

that writ petition from the petitioner-Society especially when its rights are not affected, is not permissible, as per the following position of law :-

A decree or order against a person not party thereto is, on general principles of law, not binding on him. Such a person, therefore, cannot ordinarily have a legal grievance against the decree or order and consequently, cannot apply for review of the decree or order under Order 47 Rule 1 Civil Procedure Code. But, where a third party was affected by an order of the Court, the Court can under inherent powers under Section 151 Civil Procedure Code and not under Order 47 Rule 1 Civil Procedure Code, review an order passed in a petition under Article 226 of the Constitution of India, as held by the Hon'ble Supreme Court in *Shivdeo Singh v. State of Punjab* ²

However, in the present case, the law laid down by the Hon'ble Supreme Court in the case of Shivdeo Singh (supra) would not be helpful to the petitioner-Society, as the petitioner-Society was not adversely affected in any manner by the Division Bench judgment of this Court dated 8-5-2000. Therefore, from this point of view also, the petitioner-Society cannot ask for review of the Division Bench judgment of this Court dated 8-5-2000.

(6) That it is clarified here that if the petitioner-Society still feels that its rights should be protected the petitioner-Society is at liberty to approach the appropriate forum permissible under the law, but that remedy cannot be provided to it through the present review petition, as discussed above.

11. In view of the discussion made above, the present review petition is devoid of any force and the same is liable to be dismissed. Thus, DBC stay Appln. 265/02 (Def) with other stay applications stand dismissed. Misc. Appln. 8/01 of Municipal Corporation also stands dismissed in view of order dated 29-11-2001 and 28-1-(sic) in Contempt Petition No. 3/2001.

Accordingly, the review petition filed by the petitioner-Society is dismissed. Resultantly judgment dated 8-5-2000 in WP No. 6051/97 be complied with immediately.

Review petition dismissed.

Cases Referred.

1. AIR 1964 SC 993
2. AIR 1963 SC 1909