

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 10.09.2024

Pronounced on: 26.09.2024

OWP No.143/2014
c/w
MA No.99/2014
CPOWP No.311/2017

**GHULAM RASOOL CHAKU & ORS.
GHULAM AHMAD CHAKU & ANR.**

...PETITIONERS/APPELLANT(S)

Through: - Mr. Z. A. Qureshi, Sr. Advocate with Ms. Rehana, Advocate.
Mr. M. A. Rathore, Advocate.
Mr. Shuja-ul-Haq, Advocate.

Vs.

ISHWAR ASHRAM TRUST **...RESPONDENT(S)**

Through: - Mr. M. A. Makhdoomi, Advocate, with
Mr. Hakeem Suhail Ishtiyag, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, the afore titled two cases challenging order dated 30.12.2013 passed by learned 1st Additional District Judge, Srinagar, are proposed to be disposed of.

2) It appears that the respondent Trust has filed three different suits before the Court of Additional District Judge, Srinagar, challenging three different decrees passed by the said Court on 28.02.1997, whereby the petitioners in OWP No.143/2014 (hereinafter referred to as "the writ petitioners") and the appellants in MA No.99/2014, have

been declared as owners in possession of land measuring

OWP No.143/2014

MA No.99/2014

around 08 kanals situated at Gupt Ganga, Nishat, Srinagar. It seems that the two suits against the writ petitioners were dismissed for non-prosecution on 2nd March, 2009, but later on these two suits were restored by the learned trial court in terms of orders dated 10.12.2009. These orders of restoration of the two suits came to be challenged by the writ petitioners by virtue of Civil Revision Petition Nos.40 and 41 of 2013.

3) It also appears that the writ petitioners also filed a suit for permanent injunction before the learned trial court in respect of the property which was subject matter of the suits filed by the respondent Trust against the petitioners. In the said suit, the respondent Trust filed an application under Section 10 of the CPC for staying of the suit filed by the writ petitioners and the same was allowed by the trial court on 29.07.2013. The said order came to be challenged by the writ petitioners by way of a writ petition bearing OWP No.1151/2013. The said writ petition along with Civil Revision Petition Nos.40/2013 and 41/2013, was decided by this Court on 10.09.2013 by a common order. By virtue of the said order, civil revision petitions filed by the writ petitioners were dismissed and their writ petition challenging the order of staying of their suit was allowed and

the trial court was directed to consolidate the suit filed by the respondent Trust and the suit filed by the writ petitioners together. This Court while disposing of the aforesaid three cases also directed the parties to maintain status quo with a clarification that the maintenance of status quo shall not come in the way of the devotees to offer their prayers in the temple. The parties were directed to appear before the trial court on 16th September, 2013, and the aforesaid order was to remain in operation till then.

4) It seems that the respondent Trust filed applications in all the three suits pending before the trial court, in which the decrees passed in favour of the writ petitioners/appellants were under challenge, praying therein that the defendants be restrained from creating obstruction in smooth access of the devotees at main entrance in matter of performing religious and customary rituals in the temple existing on the suit property in conformity with the order dated 10th September, 2013, passed by this Court. The defendants in all the three suits filed their objections to the said applications and also filed their written statements in all the three suits.

5) While the aforesaid applications were pending disposal before the learned trial court, another application came to be

filed by the respondent Trust on the last day of closing of the Courts for vacation i.e. 30th December, 2013, with a prayer that order dated 10th September, 2013, passed by the High Court, so far it permits the devotees to offer prayers in the temple existing on the suit land, may be extended. The learned trial court passed an ex parte order on the same day and as an interim arrangement directed that the parties shall maintain status quo with regard to the suit property but the devotees shall be at liberty to offer their prayers in the temple. The said order was to remain in operation till disposal of the interim applications already made by the respondent Trust. It is this order which is under challenge before this Court in the afore titled two cases.

6 The ground urged by the writ petitioners/appellants is that once the applications filed by the respondent Trust in three suits for a similar relief were still pending before the trial court, it was not open to the trial court to pass an ex parte interim order of similar nature without hearing the defendants. It has been contended that there was no temple existing on spot at the time when the land in question was acquired by the writ petitioners/appellants from Smt. Kamla Devi, the original owner of the land in question. According to the writ petitioners/appellants, the temple was constructed

by the security forces who were in occupation of the suit land and that the respondent Trust has nothing to do with the said temple.

7) The appellants in MA No.99/2014 have raised an additional ground that order dated 10th September, 2013, passed by this Court was relating to the suits filed by the respondent Trust against the writ petitioners and the same was not relating to the case filed by the said Trust against the appellants, therefore, the said order could not have been made applicable to their case.

8) The respondents have filed their objections to the writ petition in which it has been contended that the land in question was donated by the original owner Smt. Kamla Devi to the respondent Trust on which a temple was constructed by Swamiji. It has been submitted that the said temple is being frequented by the devotees after the security forces vacated the said property. It has been further submitted that till the disposal of the suits filed by the respondent Trust, the status quo is required to be maintained and the rights of the devotees to offer prayers in the temple existing on the suit land are also required to be protected. It has been submitted that keeping in view the aforesaid circumstances,

the High Court vide order dated 10th September, 2013 had made an interim arrangement.

9) I have heard learned counsel for the parties and perused record of the case.

10) At the very outset, learned counsel for the respondent Trust has submitted that the suit filed by the writ petitioners stands already dismissed by the trial court and, as such, the interim order passed in the said suit in favour of the writ petitioners is no longer in existence. This position has not been disputed by the learned counsel appearing for the writ petitioners.

11) In the suits filed by the respondent Trust against the writ petitioners/appellants, it has been specifically pleaded that a temple has been constructed on a portion of the land donated by Smt. Kamla Devi to the founder of the Trust. The question whether the temple has been constructed by the Trust or by the security forces who were occupying the land in question would be determined by the trial court by tendering its prima facie opinion while deciding the interim applications filed by the plaintiffs in the three suits seeking interim injunction against the defendants. However, one thing is clear that a temple does exist on the suit land. The question as to which of the parties is in possession of the

suit land is a matter regarding which a tentative opinion has to be rendered by the trial court while deciding the application of the plaintiffs filed under Order 39 Rules 1&2 of the CPC. Till such time the aforesaid application is decided by the learned trial court, the subject matter of the lis has to be protected. It is with this view that this Court has, while deciding earlier round of litigation between the parties, passed order dated 10th September, 2013, so as to devise a mechanism for maintenance of status quo on spot and safeguarding the rights of the devotees to offer their prayers in the temple existing on the suit land. The said order was made operational till 16th of September, 2013, on which date the parties were directed to appear before the trial court.

12) It seems that because of laxity on the part of the trial court, the issue with regard to interim injunction could not be decided by the said court with reasonable dispatch. So, while the Court was closing for vacation, it simply directed the extension of interim arrangement made by the High Court. The course adopted by the learned trial court is neither illegal nor perverse in nature. It is a discretion exercised by the learned trial court so as to protect the subject matter of lis till the application for grant of interim injunction is decided. Neither in exercise of its appellate

jurisdiction nor in exercise of its writ jurisdiction, this Court can interfere in the exercise of discretion by the learned trial court, particularly when the same is neither perverse nor erroneous.

13) For the foregoing reasons, I do not find any merit either in the writ petition or in the appeal. The same are dismissed accordingly. The learned trial court is, however, directed to expedite the hearing and disposal of the interim application filed by the plaintiffs for grant of temporary injunction most expeditiously by following the mandate of Order 39 Rule 3A of the Civil Procedure Code

14) A copy of this order be sent to the learned trial court for information and compliance.

CPOWP No.311/2017:

In view of the decision in the main writ petition, the order out of which instant contempt petition has arisen, has merged in the final judgment. Therefore, nothing further survives for consideration in this contempt petition. The same is, accordingly, disposed of.

(Sanjay Dhar)
Judge

Srinagar,
26.09.2024
“Bhat Altaf-Secy”

Whether the order is reportable: Yes/No