

A.C. Gilbert And Ors. vs Registrar, High Court Of Judicature, ... on 6 May, 1953

Equivalent citations: AIR1953ALL678, AIR 1953 ALLAHABAD 678

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Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is an application in which the prayer is for issue of writs in the nature of prohibition and mandamus against the opposite parties, the Registrar, High Court of Judicature, Allahabad, the State of Uttar Pradesh and three individuals, viz. Rev. R. W. Matheson, Dr. A. Ralla Ram and Rev. Kennath Masih. The applicants are Christians residing at Allahabad & claiming to be the members of the congregation entitled to worship in St Andrew's Church, Allahabad. It is alleged that opposite parties Nos. 1 and 2 are interfering with the right of the applicants to hold their meetings for prayers in the Church at the instigation of and with the connivance of opposite parties nos. 3, 4 and 5. The applicants claimed that this act of the opposite parties interferes with the fundamental right of the applicants to maintain their religious institution, St Andrew's Church, Allahabad, for religious purposes. In support of these allegations affidavits were filed on behalf of the applicants and, on service of notice, Rev. R. W. Matheson, opposite party No. 3, filed two counter-affidavits. A rejoinder affidavit has been filed on behalf of the applicants and certain documents have been appended to this rejoinder affidavit.

2. The facts, as they appear from these various affidavits, are that this church came into existence some time about the middle of the 19th century. According to the applicants, the church was a United Presbyterian Church which was consecrated and started with funds contributed by members of the Presbyterian Congregation and by private persons who, before the construction of the church, used to worship in Katra and Jumna Mission Churches. The church was constructed under the supervision of Rev. James Williamson who was a Minister of the Church of Scotland. According to the opposite parties, the church was constructed by Rev. James Williamson not on behalf of the Presbyterian Congregation of Allahabad but on behalf of the Government though public subscriptions were also raised. After the construction of the church, according to the opposite parties, its management was handed over by the Government to the Church of Scotland which also constructed certain ancillary buildings. The church, all the time, continued to belong to the Government whereas the ancillary buildings belonged to the Church of Scotland. The case of the

applicants is that they have all through been saying their prayers in this church without any appreciable break until 11-1-1953; whereas the opposite parties alleged that the use of this church for purposes of prayers was given up about 30 years ago and since then the church has been lying deserted. Their case is that it was only in 1947 that these applicants wanted to get possession of this church to start prayers therein. This was resisted by the authorities of the church of Scotland in India but the applicants did manage to use the church. The opposite parties have denied that the church was consecrated.

3. Rev. R. W. Matheson, opposite party No. 3, in his affidavit, has stated that there is no law in the Church of Scotland by which an ecclesiastical building cannot be used for secular purposes and that the authorities of the Church of Scotland had renounced their rights in this church in favour of the High Court. The remaining property, which is ancillary to St. Andrew's Church, has been claimed as the property of the Church of Scotland and it has been contended that, in order to acquire it, the Government have to pay proper and adequate compensation to the authorities of the Church of Scotland. It appears that possession over this property is already with the Government and the possession came with the consent of the authorities of the Church of Scotland. From all these facts, it would appear that the real dispute between the parties is as to the rights which the applicants and the authorities of the Church of Scotland had in this church. According to the applicants, the church was consecrated and they had a right to use it in perpetuity for their religious purposes. According to the authorities of the Church of Scotland, the church itself was the property of the Government and the Church of Scotland had merely the right to use it for religious purposes according to the usage of their Church which permitted subsequent use of the properties for secular purposes also. Opposite parties Nos. 1 and 2 have purported to exercise rights in the church and the ancillary properties by virtue of the transfer in their favour by the authorities of the Church of Scotland, renouncing their rights in the church. It is only in the case of properties ancillary to the church that a claim has been put forward on behalf of the authorities of the Church of Scotland that they are entitled to proper and adequate compensation.

4. There has not been any acquisition of the property by the State of Uttar Pradesh or the Registrar of the High Court by virtue of the Official capacity as the State of Uttar Pradesh or the Registrar of the High Court. The use of the church by the Government by virtue of their purported right of ownership is admitted by the authorities of the, Church of Scotland through Rev. James Williamson. It would thus appear that the writ, in this case, is sought against action which is being taken by opposite parties Nos. 1 and 2 not by virtue of their public capacity or office as the State of Uttar Pradesh or the Registrar of the High Court but in their capacity of claimants as owners of this property who are entitled to use this property after the renouncement of the rights of the Church of Scotland who was using it until recently. The applicants in their affidavits, have nowhere clearly stated that the act of interfering with the exercise of their rights in the church committed by opposite-parties Nos. 1 and 2 was committed by virtue of their public capacity or office. A writ of mandamus only issues to a public authority or a holder of a public office not to act contrary to any provision of a statute in the capacity of such holder of public office. No such writ can issue against a person, whether an individual or a juristic person, who purports to exercise a right by virtue of a claimed title to a certain property. For such acts, there never has been the practice of issuing any kind of writ. In the application, the applicants have mentioned writs of the nature of prohibition and

of the nature of mandamus. On the face of it, there can be no question of issuing a writ of prohibition as a writ of prohibition only issues against a judicial or quasi-judicial tribunal in order to restrain it from exercising jurisdiction not vested in it. On the facts given in the various affidavits in this case, there is not even a suggestion that the Registrar of the High Court or the State of Uttar Pradesh is acting in the capacity of a judicial or quasi-judicial tribunal. If any writ at all could issue, it could only be a writ of mandamus and, as we have already said, a writ of mandamus only issues as a direction to a public authority or to a holder of a public office to restrain that public authority or the holder of that office from acting contrary to any provision of a statute in that capacity. In this case, there being no allegation that any act is being committed by any of the opposite parties in the capacity of a public authority or the holder of a public office, no writ of mandamus can at all issue and the application must fail on this preliminary ground.

5. Besides, there is a second reason why this application cannot be entertained. Even if a writ of mandamus could issue, this does not appear to us to be an appropriate case where this Court should exercise its discretionary powers of issuing a writ of mandamus. In --'Indian Sugar Mills Association v. Secretary to Government, Uttar Pradesh. Labour Department Lucknow', AIR 1951 All 1 (FB) (A), a Full Bench of this Court laid down :

"The powers under this Article should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him."

These remarks were made by the Full Bench when dealing with an application for issue of the writ of mandamus. The principles, which should govern issue of a writ of mandamus, were further explained by another Full Bench of this Court In --'the Asiatic Engineering Co. v. Achhru Ram', AIR 1951 All 748 (FB) (B). In that case, the Full Bench held :

"The terms of Article 226 of the Constitution are very wide. They enable this Court to issue, in suitable cases, writs, directions or orders including the writs of habeas corpus, certiorari, prohibition, mandamus and quo warranto for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. It strikes us that the fact that the Constituent Assembly has vested this Court with much vast powers imposes a heavy responsibility upon it to use them with circumspection. We must not be understood to suggest that, in a suitable case, this Court will be hesitant in issuing the appropriate writ, order or direction nor must we be understood to lay down that there is any universal or general principle which governs the grant or refusal of the writs, orders or directions referred to above."

Explaining the writ of mandamus, the Full Bench remarked :

"Shortly put, it is a writ which compels a person to perform a duty the law has imposed upon him and it can be used to order things to be done as well as not to be done. The issue of this writ is entirely discretionary with the Court, and this being so, it is, in our opinion, open to a Court to refuse it in cases where, for example, a Court

of equity would, in the exercise of a sound discretion, refuse to lend its protection. Essentially, the purpose for which a 'mandamus' exists is to ensure that justice is done in all cases where there is a specific legal right, and no specific legal remedy exists. For the enforcement of such rights, it is issued as a rule only in those cases where there is no legal remedy of an equally convenient beneficial and effectual nature." Subsequent to these decisions of this Court, the Court has framed a rule for its guidance in deciding applications for issue, of writs under Article 226 of the Constitution. This rule numbered as Rule 6 of Chapter 22 of the Rules of the Court lays down that "no application under this chapter shall be maintainable if adequate relief is obtainable by the applicant by any other process of law."

6. Applying these principles to the present case, it is clear that this application for issue of a writ should not be allowed. Obviously, the applicants had the alternative remedy of instituting a regular suit in a civil court where they could obtain a declaration of their rights in this church and could ask for an injunction against opposite parties to refrain from interfering with those rights of theirs. Learned counsel for the applicants has not been able to explain to us how this remedy by a suit would not have granted to the applicants adequate relief or how that remedy would not have been equally convenient, beneficial and effectual. Learned counsel's contention was that, if a civil suit had to be filed, the suit would have taken a long time for decision that the applicants were holding services in this church upto the 11th of January, 1953, and they were stopped from holding further services when they went there on the 18th of January, 1953 and that the applicants could not have got effectual and speedy relief if they had been compelled to resort to a regular suit in a civil court. We have not been able to appreciate the force of this argument. The suit could have been instituted as early as this application was presented in this Court for issue of the writ. In case there was interference with any rights of the applicants against which an immediate remedy was required, the applicants could have got appropriate relief by moving the Court for an injunction, restraining the defendants in the suit from committing or continuing that interference. Whether the applicants would have been able to satisfy the Court that the issue of an interim injunction was justified is an entirely different matter. In fact, there was a prayer for an interim order in this application for issue of writs and that prayer was refused by this Court. In any case, the relief, which the applicants could get by presenting this application to this Court, could have been sought by them in the civil court also and it could have proved equally efficacious and speedy. Consequently, it is clear that this is a case where this Court should not exercise its discretionary power to issue a writ of mandamus.

7. There is, in fact, an additional reason which makes it undesirable to deal with this matter by exercising the power of issuing a writ under Article 226 of the Constitution. As the facts set forth above show, there is considerable dispute between the parties as to their title and rights in the property. The applicants claim that the church belongs to the Presbyterian Congregation of Allahabad whereas the opposite parties claim that the church belongs to the Government and that the Church of Scotland had only certain rights in the church. Again, so far as ancillary buildings are concerned, the applicants claim that the congregation is the owner of those buildings also whereas opposite party No. 3 has alleged that the owner of these ancillary buildings is the Church of Scotland. This is a dispute about title which requires investigation of facts and recording of evidence. This can only be done appropriately by the Civil court in a regular suit. This Court

ordinarily decides applications for issue of writs under Article 226 of the Constitution on the basis of affidavits only and, in such cases, the applications have to be decided only on admitted facts. On admitted facts, this application would fail. It would not be at all appropriate for this Court to investigate complicated questions of fact by recording evidence when dealing with an application for issue of writs under Article 226 of the Constitution. It would, therefore, appear that the remedy, which has been sought by the applicants, instead of being more convenient and effectual, is really less appropriate than the remedy by way of regular suit

8. Considering the circumstances of this case, this application cannot be allowed and is dismissed with costs.