

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1509 of 2022

Petitioner :- Anant Sharma And Another

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Shreya Gupta, Anil Kumar Srivastava, Mayank, Pawan Kumar Singh, Ranjeet Asthana, Sanjay Goswami, Shashwat Kishore Chaturvedi, Sr. Advocate

Counsel for Respondent :- C.S.C., Amit Mahajan, Arvind Kumar

Upadhyay, Ashutosh Gupta, Dharmendra Singh Chauhan, Rajeev Goswami, Saiful Islam Siddiqui, Shashi Kant Shukla, Shashi Shekhar Mishra, Tahira Kazmi, Utkarsh Birla

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. The instant writ (PIL) has been filed inter-alia to ensure public order in and around the Temple of "Shree Banke Behari" situate at Mohalla Beharipura, Vrindavan, District Mathura. The petition espouses the need for preparation of a proper scheme for management and upkeep of Shri Thakur Banke Behari Ji Maharaj Temple so that the devotees can have easy access and proper darshan of the deity Shri Thakur Ji. The petition asserts that on normal days, the average number of devotees who visit the Temple are about 40 to 50 thousands per day and on weekends like Saturday, Sunday and on some holidays, the number swells to 1.5 lacs to 2.5 lacs per day. On festival days and auspicious days, the number of devotees visiting the Temple for Darshan of Thakur Ji is about 5 lacs per day. The approach roads to the Banke Behari Temple are very narrow, congested and incapable of accommodating large crowds and facilitate free movement. The narrow lanes have been encroached upon and unauthorized constructions including guest houses, shops selling Bhog for Thakur Ji, Vastra and other items for Thakur Ji have mushroomed hampering the free movement of the devotees, who comprise of young and old as also children. The gatherings are unmanageable and untoward incident sometimes leading to death occur often.

2. The writ (PIL) refers to a Scheme of Management framed under the decree

drawn consequent to the judgment dated 31.3.1939 rendered in Original Suit No. 156 of 1938. The suit was instituted amongst Goswamis who perform Sevas of the deity classified as Raj Bhog, Shayan Bhog and Shringar Bhog. The writ (PIL) asserts that the Scheme of Management under the decree provides for setting up of a Committee of Management which shall perform the administrative functions, however, the Committee of Management as conceived under the decree is not functioning and the Civil Judge (Jr. Div.)/Munsif, Mathura is acting in the capacity of receiver and managing the administrative affairs of the Temple.

3. The writ (PIL) further asserts that on account of huge gathering of the devotees for Darshan there is law and order problems and numerous FIRs have been registered for theft, loot and loss of property. Details of cases have been mentioned in the petition. Instances of deaths of the devotees on account of huge gathering of crowd have been highlighted in the petition. It is vehemently submitted that the local administration which is duty bound to manage the gathering and ensure that proper walking corridors to approach the Temple are created to facilitate the devotees to have Darshan of the deity Shri Thakur Banke Behari Ji Maharaj, has utterly failed in its obligation. In spite of numerous mishappenings, no steps have been taken by the District Administration or by the State Government itself in this regard. Learned counsel for the petitioner, in the above realm of the circumstances, has prayed for entertaining the writ (PIL) and issuance of the directions prayed for.

4. The writ (PIL) has been opposed by Goswamis who are stated to perform the Sewa in the Temple by raising all sorts of objections i.e. non-joinder/mis-joinder of parties, material concealment and lack of credentials and bona fides of the petitioner, the writ (PIL) being collusive and filed for personal interest, PIL under Article 32 of the Constitution of India, being Writ Petition (Civil) No. 369 of 2004 filed for similar relief having been dismissed reliefs claimed barred under Order 23 Rule 3-A CPC and violative of the Article 300-A of the Constitution of India besides being violative of the provisions of the Religious Endowment Act, 1863 and the Places of Worship Act, 1981, the Temple being a private Temple, no

interference can be claimed in respect of its management and upkeep.

5. The State Government has filed an application supported by an affidavit of the Special Secretary, Religious Affairs Department, Government of U.P., Lucknow highlighting the untoward incident that occurred on 20.8.2022 resulting in the death of two devotees in a stampede inside the Temple which incident was ordered to be inquired by an Inquiry Committee headed by Shri Sulakhan Singh, former D.G.P., U.P. assisted by Shri Gaurav Dayal, Commissioner, Aligarh Division. The affidavit filed by the State Government in substance brings out the need for creation of better facilities for devotees, effective management of Thakur Behari Ji Temple and proper utilization of the Temple funds for resource creation. The affidavit asserts that the State Government intends to provide for social welfare of the general public by creation of a Trust to manage the facilities that are required to be established under the order dated 20.12.2022 of this Court. The affidavit also asserts that the public order would mandate creation of new and upgraded facilities in and around the temple inasmuch as, the buildings surrounding the Temple area are in a dilapidated condition which result in mishaps.

6. Several persons claiming themselves to be Goswamis, priest (Shebait) of the Deity, Sevayats, Sevadars or Sewadhikaris associated with the affairs of the Temple and its management have filed impleadment/intervention applications raising objections to the writ (PIL) on similar grounds enumerated here-in-before. All such applicants have been permitted to intervene in the proceedings by order dated 11.10.2023.

7. We have heard learned counsel for the petitioner in support of the writ (PIL), learned counsel for Goswamis as also learned Advocate General along with the learned Addl. Advocate General and the learned Chief Standing Counsel for the State and have perused the records.

8. The Bankey Behari Temple, Vrindavan is amongst the holiest, famous and pious Temples of Lord Krishna in India. This Temple is stated to have been constructed

sometime in 1864 with the contributions of Goswamis. Banke Behari Ji is worshiped and looked after as a child. The deity is also believed to be a combined form of Radha and Krishna. The Temple holds immense spiritual significance, offering a profound understanding of the philosophy of Bhakti Yog. Devotees believe that dedicating oneself to the path of devotion and surrendering to the divine love of Banke Bihari Ji leads to spiritual enlightenment and liberation. The popularity of the Temple attracts large crowd of devotees which most of time leads to untoward incidents and even deaths of the devotees who come to have a glimpse of their God. There exists eminent and persistent need for crowd management both outside the temple premises and inside as well.

9. From the order dated 31.8.2022, we find that this Court had adjourned the matter as learned State Counsel had sought time to place before the Court the Scheme which the State proposed for management of pilgrims in the Temple. The subsequent order dated 18.10.2022 records that the proposed Scheme of the State Government has been brought on record by an affidavit sworn by Special Secretary, Dharmarth Karya, Government of U.P., Lucknow dated 28.9.2022. Briefly, the Scheme refers to development of Temple area as corridor, with purchase of about 5 acres of land around the Temple for facilitating Darshan and Puja by the devotees. The Scheme records that there would be no interference of any kind in the Puja-Archana or Shringar carried out by the Goswamis and whatever right they have shall be continued to be enjoyed by them. The Scheme further mentions that besides use of purchase of 5 acres of land around the Temple, provisions for other facilities, such as parking area and other public amenities shall be provided for which the cost would be borne by the State. The order dated 18.10.2022 further records the factum that the Goswamis have expressed their apprehension that the funds lying in the account of the Deity in the Temple may be utilized for purchase of the land of 5 acres around the Temple as proposed by the State and strongly object to the same. They, however, have expressed no objection in case the land is acquired by the State on its own expenses. However, ancient Temples in the vicinity of Bankey Behari Ji Temple may be included in the Scheme and preserved.

10. Learned counsel appearing for the State in order to demonstrate the viability of the proposed Scheme displayed 3-D video presentation before this Court and all other affected parties during the course of the proceedings. The counsel, however, submitted that the proposed Scheme is being opposed by the Goswamis even for its implementation outside the Temple premises. This Court had required the parties to mediate the dispute on at least two occasions, but the mediation proceedings were not successful. The counsel has asserted that the Scheme and the blue prints of the maps/drawings etc., have been got prepared by technical experts and are entirely viable, however, it requires the co-operation of the Goswamis and Temple management for its effective implementation. The State Counsel also contends that for the construction of the proposed corridor the co-operation of the other persons occupying the land around the Temple is also necessary.

11. Records further reveal that on the request of the Goswamis who perform Sewa in the Temple, the proposed Scheme by the State Government was got examined by a retired Judge of this Court. The report submitted by the learned retired Judge of this Court is on record.

12. From the order dated 18.10.2022, we find that the exercise for getting the Scheme, proposed by the State Government examined by a retired Judge of this Court, was with regard to Crowd Management in the temple and surrounding areas. Though objections have been filed against the said report but the same relate mainly to the Crowd Management within the temple premises.

13. From the arguments advanced before us by the learned counsel appearing for the Goswamis, in opposition to the writ (PIL), in substance, we find that the opposition is with regard to interference in management of crowd within the temple premises. They also apprehend that the State Government would interfere in the management of affairs of the Temple.

14. Learned counsel appearing for the Goswamis have clearly expressed that they would have no objection to the proposal of the State Government so far as the

crowd management outside the Temple premises is carried out. Their only apprehension is that Temples in the vicinity and places of religious significance may be preserved.

15. We are conscious of the issues of public importance highlighted in the instant writ (PIL) relating to the difficulties faced by the Devotees/ visitors to the Temple. We are also conscious of the numerous untoward incidents leading to the deaths of the Devotees young and old on account of crowd mismanagement that have been occurring time and again particularly, when significant religious festivals such as Krishna Janamastami, Rakshabandhan, Sharad Purnima etc. take place, on which dates the crowd is stated to be not less than five lacs per day. The Court is also conscious of the fact that proper Darshan of the Deity is also at the whims and fancies of the Sevayats. The acrimony between the Sevayats belonging to the Raj Bhog and the Shayan Bhog often leads to difficulties being faced by the devotees in performance of their religious pujas. We have no doubt in our minds that proper management of the Temples, pilgrimage centres religious places of great importance is a matter of public interest. These places are of undoubted, religious, social, historical and architectural importance, representing cultural heritage of our country. Millions of people visit these places not only for tourism but also for seeking inspiration for the righteous values and for their well being. They also make huge offerings and donations for advancement of such values.

16. The Apex Court while considering the difficulties faced by the visitors to Shri Jagannath Temple at Puri and their harassment or exploitation by the Sevaks of the Temple in the case of ***Mrinalini Padhi versus Union of India*** reported in **2018 (7) SCC 787** observed as under:-

"20. The issue of difficulties faced by the visitors, exploitative practices, deficiencies in the management, maintenance of hygiene, proper utilization of offerings and protection of assets may require consideration with regard to all Shrines throughout the India, irrespective of religion practiced in such shrines. It cannot be disputed that this aspect is covered by List III Item 28 of the Seventh Schedule to the Constitution of India and there is need to look into this aspect by the Central Government, apart from State Governments."

17. In the same judgment, the Apex Court in Paragraph 30.9 observed that difficulties faced by the visitors, deficiencies in management, maintenance of hygiene, appropriate utilization of offerings and protection of assets with regard to shrines, irrespective of religion is a matter for consideration not only for the State Government, Central Government but also for Courts.

18. Then again, the Apex Court in the subsequent decision in the case of ***Mrinalini Padhi versus Union of India*** reported in **2019 (18) SCC 1** in Paragraph 40.6 observed as under:-

"When there is a vast congregation of people, it becomes the Government's duty to ensure welfare, law and order, hygiene and provide proper amenities and sanitation facilities. The State Government is, therefore, directed to work out and prepare a plan in this regard. The Temple Administration is directed to coordinate with the Government in this regard for providing shelter place and facilities to the pilgrims."

19. From the records, we find that the State Government has already submitted a detail proposal with regard to immediate, short terms and long term suggestions for better management of temple and its surrounding areas. The immediate suggestions include amongst others, the increase of temple visitation time, online registration of devotees with time slots, Darshan through digital screens, creation of ramps and new barricading inside the temple etc. Short term suggestions include creation of trust to manage the temple property in the absence of any management in place, increase in the space around the temple, structural audit of temple etc. Long term suggestions include amongst others development of a large corridor for better crowd management with various facilities for the devotees, expansion of lane surrounding the temple, development of the Ghats near the temple so that devotees can be diverted to these ghats for crowd management etc. Since, the immediate and short terms suggestions relate mainly to the internal crowd management of the temple, we at this stage, leave the same open for further deliberations. However, as regards the long term suggestions for better management of the area around the temple i.e. constructions of corridor for better crowd management with various facilities for the devotees, we are of the opinion that the restrictions of public order morality and health as enshrined under Article 25 and 26 of the Constitution of India

would compel us to direct the State Government to act in accordance with law for providing better facilities to the devotees in and around the Temple premise. We further direct the State Government to proceed with the implementation of the Scheme and Plan submitted before this Court, in accordance with law.

20. Human life cannot be put at stake just because somebody has objection. In our opinion, even the private Temples where devotees come for Darshan, safety of human life is required to be treated of utmost importance and the Government is bound to make necessary arrangements. Under the Constitution certain religious rights have been protected by Article 25 and 26 but these fundamental rights are not absolute and are subject to maintenance of public order. These restrictions find importance and have been specifically mentioned in Articles 25 and 26. Furthermore, no religious community denomination can claim that suggestion in the interest of public order, as per Article 25 and 26 can be destructive of their fundamental rights. The Supreme Court in ***Gulam Abbas Vs. State of U.P. and others*** reported in ***1984 (1) SCC 81*** has reiterated as above.

21. We are not in agreement with the argument of the State Counsel that for construction of the Corridor, the funds deposited in the Bank belonging to the Deity may be permitted to be utilized. This amount of Rs.262.50 Crores lying in the Bank, shall remain untouched particularly as we have not adjudicated the inter se rights of the State viz a viz the Sevayats (Goswami Samaj) and the Government is free to utilize its own money for the secular activity of facilitating public interests.

22. Considering the public importance highlighted in the writ (PIL) coupled with the fact that the State Government is obligated to take steps to ensure public order in and around the Temple and also to ensure the health and safety of the public at large, taking note of the fact that Darshan of the Devotees should not be hampered in any manner at this stage, we direct as under:-

- i) The State Government to proceed with the implementation of plans and scheme submitted to this Court, which the Court finds appropriate and

necessary in the interest of justice. We leave it open for the State Government to take whatever steps it deems appropriate, after consultation with the technical experts in the field, for implementing the Scheme. The State Government is also free to take appropriate steps for removing the encroachment over the approach roads (galis) to the Temple.

ii) The State Government, after implementation of the Scheme, is expected to ensure that no further obstructions/encroachment be allowed to come up on the approach roads to the Temple. In the event any such offending act is undertaken by anyone, the Government is free to take action against such erring persons in accordance with law.

iii) We make it clear that the Darshan of the devotees shall not be hampered in any manner, except for the implementation of the Scheme, during which appropriate alternative arrangements shall be made. The present Management along with all the stakeholders are directed to ensure that the Darshan of the devotees are not restricted in any manner and by anyone. The District Authorities are also directed to ensure strict compliance of the above directions and any act of violation shall be reported to this Court.

23. We place on record our appreciation for the stand taken by the Goswami Samaj in extending their wholehearted support in implementing the Scheme for the benefit of devotees and members of the general public.

24. While passing this order, we are not touching the respective rights of the parties and such questions are left open for consideration.

25. List this case on 31st January, 2024.

Order Date :- 8.11.2023

Ravi Prakash

(Ashutosh Srivastava, J.) (Pritinker Diwaker, CJ)