

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 236 of 2022

Petitioner :- Dr. Rajneesh Singh

Respondent :- Uoi Thru. Ministry Of Culture And 2 Others

Counsel for Petitioner :- Ram Prakash Shukla

Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Subhash Vidyarthi,J.

1. Heard Mr. Rudra Vikram Singh, learned counsel representing the petitioner, Mr. Surya Bhan Pandey, learned Senior Advocate and Assistant Solicitor General of India on behalf of respondents no.1 and 2 and learned State Counsel representing the State of Uttar Pradesh.

2. These proceedings ostensibly in public interest have been instituted under Article 226 of the Constitution of India with the following prayers:

"1. Issue a Writ Order/Direction in the nature of mandamus by appointing a facts finding committee to study and publish the real History of Taj Mahal and to put to rest the controversy and clarify the History of Taj Mahal.

2. Issue a Writ order/ direction in the nature of Mandamus to open the sealed doors (approx. 22 rooms) inside the Taj Mahal to rest to the controversy.

3. Issue a writ, order, direction in the nature of mandamus Ancient declaring And the provisions of The Historical Monuments And Archaeological Sites And Remains (Declaration Of National Importance) Act, 1951 to the extend of declaring the ancient and historical monuments and other and Archaeological Sites namely Taj Mahal. Fatehpur-sikiri, Agra Red Ford Ethmadualla and other Monuments as built by Mugal invaders on the basis of report submitted by Then Governor General, Lord Auckland, and young lieutenant Alexander Cunningham conceived indigenous scheme of "Divide and Rule" and thereby misusing the archaeological studies, as ultravires to Article 19 (1) (a), 25,26 49 And 51-A (1) (h)constitution of India and this Hon'ble Court may declare the provision of Ancient and Historical

Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), The Ancient Monuments And Archaeological Sites And Remains Act, 1958 of declaring these ancient building/ monuments preserved with such false identity without any scientific inquiry/ investigation as purported Muslim monuments /graveyards as unconstitutional and void.

4. Issue a writ, order, direction in the nature of mandamus directing the respondent authorities in particular Archaeological Survey of India 1)- to open the locks of upper and lower portions of the 4 storeyed building of Taj Mahal having numbers of rooms, 2)-to remove all bricked up walls build later blocking such rooms therein, 3)-to investigate scientifically and certify that which of those or both cenotaphs are fake,4)-to look for a subterrance storey below the river bank ground level, 5)-to look into after removing the room entrance directly beneath the basement cenotaph chamber.6)- by removing the brick and lime barricade flocking the doorway, 7)-to look for important historical evidence such as idols and inscriptions hidden inside there by the Shahjahan's orders as truth may not make us rich but the same will make us free from superstitions and false propaganda of some of fundamentalists.

5. Any other Writ, Order or Direction, Which this Hon'ble Court May deem fit in the circumstances of the case."

3. When we examine the prayer clause in the writ petition, what we find is that this petition seeks a direction to be issued by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India for commissioning a study in respect of the history of a monument known as Taj Mahal which is situated in Agra.

4. The other prayer in the writ petition is that the authorities may be directed to open the sealed doors of approximately 22 rooms said to be situated inside the said building, namely Taj Mahal so that the alleged controversy relating to its history may be set at rest.

5. The third prayer made in the writ petition relates to a declaration which the petitioner has prayed for to be made by this Court for declaring a parliamentary enactment namely Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of

National Importance) Act, 1951 to be ultra-vires the provisions of Article 19 (1) (a), 25, 26, 49 and 51-A (f) (h) of the Constitution of India to the extent the said Act declares certain monuments mentioned in the prayer clause as having been built by Mughals.

6. Another prayer made in the writ petition is for issuing a direction to the respondents, particularly the Archaeological Survey of India, to open the locks of the upper and lower portions of the four storeyed building of Taj Mahal and to remove all the walls built which are blocking such rooms and further to investigate scientifically and certify as to which of two cenotaphs are fake.

7. The last prayer also seeks certain other directions regarding removal of certain structures within the building so that historical evidence said to be hidden inside it may be brought to surface.

8. On a closure examination of the prayers made in this petition, we are of the opinion that the petitioner has called upon us to adjudicate and give a verdict on a completely non-justiciable issue. While exercising our jurisdiction under Article 226 of the Constitution of India, though it is said that this Court is a Court of plenary jurisdiction, however, the power of judicial review is circumscribed by certain well recognized and established legal principles; one of such principles is the doctrine of non-justiciability. Justiciability of an issue means amenability of the issue to be adjudicated upon by a judicial or quasi judicial process. The well known doctrine of non-justiciability enunciates that if there are no judicially manageable standards available to a Court to adjudicate upon an issue, the petition of such a nature will not be maintainable.

9. The first prayer, if viewed in the light of the discussion made herein above, in our considered opinion, cannot possibly be adjudicated upon by this Court. The petitioner seeks commissioning of a study so that the history of Taj Mahal may be explored and the controversy said to be existing around it may be put to rest. As to which subject should be

studied or researched or which topic of a particular area or discipline of study needs to be researched are not the issues where this Court can be said to be possessed of any judicially manageable standards to adjudicate upon. Such issues, in our considered opinion, should be left to be debated amongst the academicians, scholars and historians.

10. As regards the prayer made by the petitioner seeking a direction for opening up of the rooms existing in 'Taj Mahal' and removal of certain structures to facilitate historical study is concerned, we may at this juncture itself indicate that any historical research conducted by the academicians will necessarily involve a particular methodology. Determination of the question as to which particular methodology of research would yield correct results, in our opinion, lies outside the scope of our jurisdiction and powers of judicial review. Such issues namely, choosing of a particular methodology for conducting a research in any subject or on any topic should be left to the academicians and researchers.

11. There is yet another issue which needs to be considered for deciding as to whether this writ petition can be entertained in the form it has been presented before us. It is well recognized principle that a writ of mandamus can be issued only in case of infringement of any right, be it a constitutional right or a statutory right or any other legal right. When we enquired from the learned counsel for the petitioner as to from where the right to get a particular study or research conducted on a particular topic or subject emanates, we could not get any satisfactory reply. Even otherwise, to conduct study and research or exploration of knowledge etc. are the subjects and issues which, as observed above, are better to be left to the academicians, the researchers and experts of the field. In absence of infringement of any legal or constitutional right, we are afraid we are not able to entertain the writ petition.

12. The petitioner essentially has called upon us to give a verdict as to which particular methodology of research relating to finding out certain

historical facts of Taj Mahal would be more appropriate. We are afraid, it is not permissible for this Court in exercise of its jurisdiction under Article 226 of the Constitution of India to entertain such questions or issues which better need to be debated amongst historians and scholars and academicians. Judges by experience and training are not equipped to pronounce any verdict on such non-justiciable issues.

13. We may also note that any interference by the Courts is permissible only in case of infringement of any legal/statutory/constitutional right or in case the petition is filed for enforcement of any such right.

14. The Court exercising powers of judicial review may refrain itself from exercising its jurisdiction if it finds that the controversy raised before it cannot be adjudicated upon or determined on any judicially manageable and discoverable standard.

15. For the reasons aforesaid, we are not inclined to interfere in this writ petition so far as prayers no.1, 2 and 4 are concerned.

16. As respects prayer no.3, when we peruse the 1951 Act in respect of which a declaration has been sought that the said Act is ultra-vires the provisions contained in Article 19 (1) (a), 25, 26, 49 and 51-A (f) (h) of the Constitution of India, we find that the 1951 Act has been repealed on promulgation of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Act 24 of 1958) which has come into force with effect from 15.10.1959. Section 39 (1) of the 1958 Act is extracted herein below:

“39. Repeals and savings.—(1) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), and section 126 of the States Reorganisation Act, 1956 (37 of 1956), are hereby repealed.

17. Thus, any prayer made seeking a declaration that a legislation is ultra-vires, which stood repealed about sixty four years ago, is redundant.

18. In view of the discussion made and reasons given above, we find that the instant writ petition raises issues which are non-justiciable. Resultantly, we are not inclined to entertain the petition, which is hereby *dismissed*.

(Subhash Vidyarthi, J.) (Devendra Kumar Upadhyaya, J.)

Order Date :- 12.5.2022

Ram.