

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE HIRDESH

WRIT APPEAL NO. 1111 of 2025

SHRI SABLA HASAN

Vs.

THE UNION OF INDIA & ORS.

APPEARANCE:

Shri Ashish Srivastava – Advocate for the appellant.

Shri Praveen Kumar Newaskar – Dy. Solicitor General for respondents No.1,3&4/ Union of India.

Shri Vivek Khedkar – Additional Advocate General for respondents No.2&5/State.

JUDGMENT

{Delivered on 16th the day of June, 2025}

Per: Justice Anand Pathak

1. The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant being crestfallen by the order dated 10-03-2025 passed by learned Single Judge in Writ Petition No.27200 of 2024 whereby the writ petition filed by the appellant (as petitioner in writ petition) got dismissed.
2. Precisely stated facts of the case are that petitioner is Sajjada Nashin of Dargah Hazrat Sheikh Muhammad Ghaus and as submitted he is legal heir of Hazrat Sheikh Muhammad Ghaus. According to petitioner in the Dargah of Hazrat Sheikh Muhammad Ghaus, various religious and cultural activities are

performed for over last 400 years. However, subsequent to the Archaeological Survey of India (ASI), declaring the Dargah as a protected monument, such activities have been prohibited or curtailed. Those activities include Urs (Jalsa) and Namaz.

3. On 02-03-2024, petitioner submitted an application to the ASI requesting for permission for performing Urs at Dargah but vide letter dated 14-03-2024 (Annexure P/4) said permission was denied. It has been mentioned in the said letter that said premises is a protected monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as “the Act of 1958”) and as per the Rules it can only be opened from Sunrise to Sunset. As per Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (hereinafter referred to as “the Rules of 1959”) no such permission can be granted. It is further mentioned that as per Section 30 of the Act of 1958 and rule 8 of Rules of 1959 any such act would be punishable with two years imprisonment with fine of Rs.1 lac. Therefore, writ petition was filed by the petitioner in September, 2024.
4. It is the submission of learned counsel for the petitioner that action/inaction of respondents' authorities are illegal and arbitrary in nature. Petitioner and his forefather are performing the practice of Urs for over 400 years and therefore, this is a regular custom/religious practice which can be carried out in Dargah.
5. According to counsel for the petitioner question of violating rule 8 of Rule of 1959 does not arise in any manner and as per the provisions of the Act of 1958 petitioner is entitled to perform Urs

and Namaz in the premises.

6. Learned counsel for the respondents/Union of India while filing the detailed reply vehemently opposed the prayer on the ground of concealment of facts. According to him, petitioner did not approach this Court with clean hands and concealed/misrepresented the facts.
7. It is the submission of learned counsel for the respondents/Union of India that tomb of Muhammad Ghaus is a Centrally Protected Monument vide gazette notification dated 23-01-1962 (Annexure R/1) and is protected and maintained by ASI. While referring the conduct of petitioner, it has been mentioned that for ownership of the said monument/tomb of Muhammad Ghaus, Peerjada Syed Ali Hasan filed Case No.59-A/1986 (Civil Suit) in the Court of XVI Civil Judge Class -II, Gwalior which was dismissed vide judgment dated 28-09-1995 (Annexure R/2). Thereafter, two sons of Peerjada Syed Ali Hasan namely Syed Muhammad Hasan and Syed Sipte Hasan and two daughters namely Fauziya Begam and Shabana Begam as legal representatives of Syed Ali Hasan preferred First Appeal before VII Additional District Judge, Gwalior but the said appeal got dismissed after detailed order passed by the appellate Court vide judgment dated 12-04-2004 (Annexure R/4).
8. Another litigation by way of Civil Suit No.23-A/1996 was filed at the instance of son of Peerjada Syed Ali Hasan namely Syed Muhammad Hasan, which was dismissed vide judgment dated 23-07-1999. Against the said judgment, Civil Revision No.1043/1999 was preferred before the Single Bench of this

Court which also got dismissed vide order dated 05-03-2002 (Annexure R/3).

9. Meanwhile, as submitted by respondents/Union of India that against the order dated 12-04-2004 passed in First Appeal No.30-A/2004, Second Appeal No.486/2004 was preferred before this Court which also got dismissed vide judgment dated 13-01-2015 (Annexure R/5). Said Second Appeal contains all previous litigations into consideration and dismissed the appeal preferred by the appellant as referred above. The review petition bearing No.231/2015 was also filed against the order dated 13-01-2015 but the same was also dismissed vide order dated 30-03-2016. In the said review petition, one fact was mentioned that matter has gone upto Supreme Court and there, petitioner lost. Therefore, according to respondents/Union of India, dispute regarding ownership over the land in question has also attained finality in which petitioner and his forefather/family members lost. Without disclosing these facts, petitioner approached this Court with malafide intention.
10. It is further referred that a Public Interest Litigation bearing writ petition No.1692/2010 (PIL) was taken *suo moto* by this Court on the basis of news article published in one daily news paper on 01-04-2010. After hearing submissions, vide order dated 20-02-2014 this Court issued certain directions including direction to the ASI and Municipal Corporation, Gwalior to identify the encroachment within the territory of protected monument and if found any encroachment then appropriate action was directed to be taken for removal of encroachment. Said order further indicates that the

State Government and Union of India shall not permit the Organizer to hold any Urs or other activities without prior permission of ASI. District Administration is also directed to provide help to the ASI to prevent illegal activities within the territory of protected monument and appropriate action be ensured against miscreants.

11. It is further submitted that not only this, in year 2019, petitioner Syed Sabla Hasan also filed case No.A-10/2020 before M.P. Waqf Tribunal, Bhopal regarding claim of ownership of tomb of Muhammad Ghaus and the same was dismissed in favour of ASI vide order dated 31-10-2022.
12. It is the specific submission of learned counsel for the respondents/Union of India that Syed Sabla Hasan and Syed Jaaul Hasan are filing fake claims time and again despite the litigation attained finality. They are consistently pursuing unlawful activities in premises which created hindrance in protection of archaeological monument of National Importance. They are doing illegal acts like installation of electrical wiring, lights, tents/structure, furnaces, hammering nails over the wall of premises. They spread garbage in the premises and try to distract visitors from their visit. In fact, District Administration is required to take stern action against these persons so as to protect monument and stop their unlawful activities. They try to assert by making an attempt to perform such activities and intend to encroach upon the area once again.
13. It is further mentioned that Syed Jaaul Hasan has wrongly been allowed as Mujabir in case No.0006/B-121/2023-24 by Sub

Divisional Officer (Revenue), Lashkar District Gwalior without knowing the submission of ASI. In fact, ASI took steps to get the order dated 04-03-2024 corrected/set aside. According to counsel for respondents/Union of India no permission can be granted to organize Urs at Centrally Protected Monument, Tomb of Muhammad Ghaus and said intimation was given to the petitioner vide letter dated 14-03-2024. However, petitioner did not prefer to challenge the said order. Thus, prayed for dismissal of this appeal with exemplary cost.

14. Learned counsel for respondents/State also vehemently opposed the prayer and submits that in view of the documents placed before this Court in reply of Union of India, it is imperative that the present writ appeal be dismissed with cost because petitioner has not approached this Court with clean hands. Learned Additional Advocate General undertakes that District Administration shall take proper steps and would assist the ASI to ensure protection and preservation of National Monument, Tomb of Muhammad Ghaus.
15. Heard learned counsel for the parties at length and perused the documents appended thereto.
16. Tomb of Muhammad Ghaus is situated in the city of Gwalior and admittedly it is a Centrally Protected Monument and declared as National Monument way back in 1962 vide Gazette notification dated 23-01-1962 (vide Annexure R/1). In the premises, tombs of Great Music Maestro Tansen and Muhammad Ghaus are constructed. Tansen was one of the Nine Jewels of Mughal King Akbar and remembered for his Classical Dhrupad Compositions,

creating several new Ragas and written Classical Books of Music “Sri Ganesh Stotra” and “Sangita Sara”. Dhrupad an epic form of music is considered to be invented by Raja Man Singh Tomar (Ruler of Gwalior) in medieval times. Therefore, National Monument where Tansen and Muhammad Ghaus (famous musician of medieval times) are buried, deserves preservation and protection.

17. At the time of Independence, The Ancient Monuments Preservation Act, 1904 was prevailing and later on The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 also came into being. Thereafter, the Act of 1958 was enacted and by the effect of Section 39 of the Act of 1958, earlier two Acts got repealed and ceased to have effect.
18. Aim and object of the Act of 1958 throws valuable light over legislative intent as prescribed in the Act. Same reads as under:
“An Act to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects.”
19. In the Act ancient monuments, antiquity, archaeological sites and remains are defined. By the very spirit of the Act of 1958 and its provisions, it is meant to preserve History, Culture, Civilization and past attributes relating to them for posterity and for guidance of future generations. Therefore, the very intent is to preserve them and regulate them for visit of the people, for getting

knowledge about our past and to undertake research for future, if required.

20. Not only this, even our Constitution makers were cognizant of this important fact and their conviction and belief in protection of monuments of National Importance reflected in Part IV of Constitution where Directive Principles of State Policies are placed. They are Light House for the State and are fundamental in the governance of the country with the expectation that State shall apply these principles for making the laws. Article 49 of the Constitution deals in respect of protection of monuments, places and objects of national importance. Article 49 of the Constitution reads as under:

“49. Protection of monuments and places and objects of national importance - It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests (declared by or under law made by parliament) to be of national importance, from spoilation, disfigurement, destruction, removal, disposal or export, as the case may be.”

21. This Article indicates vision of Constitution makers and if it is seen in juxtaposition of Article 51A(f) of the Constitution wherein it is one of the fundamental duties of every citizen of India to value and preserve the rich heritage of our composite culture, thus it is clear that we have to preserve our rich cultural heritage reflected through monuments/ buildings/ traditions/ antiquities etc. They are to be protected from spoilation/destruction etc. as referred in Article 49 of the Constitution.

22. To further the Constitutional vision as well as the aims and objects of the Act of 1958, **Sections 4, 16, 18 and 19 are worth consideration.**
23. If the case is seen from this vantage point, then it would be clear that National Monument deserves to be protected and preserved in a manner prescribed by law. Sections 4 and 16 are reiterated for ready reference:

“4. Power of Central Government to declare ancient monuments, etc., to be of national importance.—(1)

Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in section 3 is of national importance, it may, by notification in the Official Gazette, give two months’ notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains, as the case may be, to be

of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

16. Protection of place of worship from misuse, pollution or desecration.—*(1) A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.*

(2) Where the Central Government has acquired a protected monument under section 13, or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of, a protected monument under section 5, and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or part thereof, from pollution or desecration—

(a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary

in this behalf.”

24. The tomb of Muhammad Ghaus (premises includes tomb of Tansen also) was declared ancient monument of national importance purportedly under Section 4(3) of the Act of 1958 as reflected in Gazette Notification dated 23-01-1962 and since then it was maintained by the Central Government/ASI. If petitioner is permitted to conduct Urs and Namaz then certainly as alleged by respondents/Union of India, structure would suffer spoilation/damage where tents would be installed, hammering nails would be fixed, lights would be fixed, thus causing degradation, spoilation, pollution and desecration. Since protected monument is not declared archaeological monument to be of national importance under Section 5 or 13 but under Section 4 of the Act of 1958, therefore, no permission can be granted for use as mentioned by the petitioner. This monument does not fall under the place of worship and shrine. It is being acquired by the Central Government. It is an archaeological monument declared by the Central Government as monument of National Importance under Section 4 of the Act of 1958. Therefore, it cannot be used except to be protected as monument.
25. One more aspect deserves consideration is that Section 18 of the Act of 1958 gives right to the public to have right of access to any protected monument and if the prayer as made by the petitioner is accepted then it would certainly hinder the right of access given to the public under Section 18 of the Act of 1958. Section 18 of the Act of 1958 reads as under:

“18. Right of access to protected monuments.—Subject to

any rules made under this Act, the public shall have a right of access to any protected monument.”

26. Therefore, right of access given to the public at large deserves protection and understandably so because by visit of public at large, give them an insight into their history and culture. They come to know about their moments of glory in the past and learnt lesson also from it.

It is stated that – **Those who forget History are Condemned to repeat it.** Therefore, for learning of future generations, right of access to protected monument is an important statutory right. Same deserves protection.

27. Section 19 of the Act of 1958 put restrictions on enjoyment of property rights in protected areas. Therefore, no person, including the owner or occupier of a protected area shall construct any building/or make operation within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof. Thus, it is clear that even if a person is owner of the property of protected area, even then he cannot do such activities. Here, the civil suits filed for ownership were dismissed long back as referred in the reply of respondents/Union of India and discussed in preceding paragraphs. Therefore, on this count also, petitioner has no case on merits.
28. Perusal of all these documents indicate that ownership issue was rejected by the Courts below after conducting regular trials. Therefore, on this point also when owner of property has restriction on enjoyment of property right in protected area then

the person like petitioner has no right whatsoever of stay in the protected area or to cause any mischief as alleged by the respondents.

29. In fact it is the duty of the ASI and District Administration to protect this monument of National Importance with utmost care and strictness so that such ancient monument carrying History and Culture into its ambit, be preserved for posterity.

30. In view of the above discussion, it is clear that Constitutional Vision and Constitutional Morality ought to prevail over personal and vested interest. It deserves to be protected with utmost care and caution and no activity as sought by the petitioner can be permitted lest monument will lose its originality, sanctity and vitality. It would be a National loss then.

31. One more aspect deserves attention is nature of relief sought by the petitioner. Petitioner sought following reliefs in his writ petition:

“1. That, this Hon’ble Court may kindly direct the Respondent authorities to consider the grievances of the petitioners and allow the petitioner and other local people to perform the religious activity (Urs and Namaz) in the interest of justice.

2. That, any other relief which this Hon’ble Court deems fit may be passed in the interest of justice.”

32. From perusal of relief clause it is clear that petitioner did not challenge the order dated 14-03-2024 passed by the ASI whereby he was given intimation about rejection of his application. That order still stands and stares at petitioner. Therefore, in absence of

any challenge made to this order, no relief can be granted to the petitioner.

33. Another ground raised by the respondents/Union of India is concealment of facts. Said aspect is writ large in the case and indicates mischievousness of petitioner and motive can be attached because of such mischief of concealment of facts. Learned Writ Court rightly dealt in extenso about such mischief. This disentitles the petitioner to deny issuance of writ in discretionary jurisdiction. This Court affirms the said findings of learned Writ Court and holds that petitioner did not approach this Court with clean hands.
34. In the conspectus of facts and circumstances of the case as well as in view of the discussion made above, no case for interference in the impugned order is made out. ASI rightly rejected the application of petitioner vide order dated 14-03-2024. Copy of this order be sent to Collector, District Gwalior, S.P. District Gwalior for information and consideration.
35. Appeal sans merits and is hereby dismissed sans cost.

Anil*

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE