
(2011) 10 GAU CK 0012
In the Gauhati High Court

Case No : Writ Appeal No. 311,312 of 2004 & Writ Petition (C)No. 923 of 2005

Riju Prasad Sarma & Ors.

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 25-10-2011

Acts Referred:

Constitution of India, 1950 — Article 246, 246, 254(2), 254(2), 31A

Citation : (2012) 1 GLT 66

Hon'ble Judges : Amitava Roy, J and H.Baruah, J

Bench : Division Bench

Advocate : Mr. AK Bhattacharjee, Sr, Advocate, Mr. S Sarma, Mr. DK Mishra, Sr. Advocate, Ms S Jahan, Mr. DK Mishra, Sr. Advocate, Ms S Jahan., Advocates appeared for the Respondents. Mr. BC Das, Sr. Advocate Mr. P Pathak, Sr. Advocate Mr. CK Sarrna Baruah, Sr. Advocate, Mr. S Shyam, Mr. B Sarma, Mr. KN Chowdhury, Addl. A.G, Assam, Mr. AC Buragohain, Addl. A.G, Assam, Mr. PS Dekha, G.A., Assam, Advocates appearing for Parties

Judgement

Amitava Roy, J.—This adjudicative pursuit beholds a triangular orientation of competing assertions centering around the centuries old religious institution adorned by the globally revered deity, Shri Shri Maa Kamakhya nestled in the verdant Nilachal Hills overseeing the mighty river Brahmaputra from its southern bank. The aforementioned appeals mount a challenge to the judgment and order dated 6.8.2004 rendered in WP(C) No. 5385/2000 along with WP(C) Nos. 6184/2000 and 2955/2002. The deity as well has been made to figure in the legal wrangle encompassed in WP(C) 935/2005 in a bid to nullify the provisions of the Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Mature Act, 1959 (for short, hereinafter referred to as "the Act") with its amendment in the year 1987 integrating Section 25A thereto. The constitutional validity of this enactment as a whole has been impeached.

2. Whereas the appellant in W.A. No. 311 /2004 was the writ petitioner in WP(C) No. 5385/2000 representing himself to be an administrator of the Kamakhya Debutter (hereinafter also referred to as "the Kamakhya Debutter Board/

Board"), one Sri Kamal Chandra Sarma [petitioner No. 1 in WP(C) 6184/2000] designating himself to be Chairman of the Board has lifted the cudgel against the aforementioned decision in W.A. No. 312/2004. In view of their interpositions, the petitioners(s)/ appellant(s) have been referred to hereinafter in the alternative.

3. We have heard Mr. DK Mishra, Senior Advocate assisted by Ms. S Jahan, Advocate for the petitioner in WP(C) No. 935/ 2005 as well as for the appellant in W.A. No. 312/2004; Mr. AK Bhattacharjee, Senior Advocate assisted by Mr. S Sarma, Advocate for the appellants in W.A. No. 311/2004; Mr. AC Buragohain, Addl. Advocate General, Assam and Mr. PS Deka, learned Govt. Advocate, Assam for the State respondents as well as Mr. BC Das, Senior Advocate; Mr. P Pathak, Senior Advocate, Mr. C.K. Sarma Baruah (since deceased) assisted by Mr. S Shyam and Mr. B Sarma, Advocates for the private respondents.

4. Before being enmeshed in the contentious pleadings, expedient it would be to briefly trace the overwhelming and phenomenal historical background of the hallowed site of international repute presided over for the time immemorial by the omnipotent deity Shri Shri Kamakhya. The factual backdrop is unquestioned and finds a felicitous and explorative narration in the judgment dated 25.2.1931 passed by the Special Sub Judge, Assam Valley Districts at Guwahati in Title Suit No. 45 of 1927. A skeletal reproduction therefrom with this acknowledgement would suffice the present endeavour.

5. From time immemorial there existed a Peetha or jyotimudra (sacred sign/ emblem) of Goddess Shri Durga venerably known as Shri Kamakhya in the Nilachal Hills situated on the south bank of river Brahmaputra in the State of Assam. With this shrine as the principal deity, several other subsidiary peethas or shrines surfaced around it being located all over the aforementioned hill. The discovery of these peethas or shrines had been gradual with time. Mythology traces construction of the temples with walls and stone stairs uphill to the engineering feats of King Narakasura, thus, making the location known and accessible. After the vandalic invasion of the Kamakhya Hill by Kalapahar of Bengal, as the history testifies, the Koch Dynasty during its prime held its sway over the whole of Kamrup. It was King Naranarayana who then rebuilt the Kamakhya Temple and introduced a regular scheme of worship, thus, streamlining the then prevailing disorderly state of affairs. With the emergence of the Ahom regime, five upper districts in the Brahmaputra Valley including Kamrup with the Nilachal Hills came under its rule. Since then till the advent of British in Assam in 1826, the Ahom Kings controlled and supervised all the affairs of the Kamakhya Institution which had developed into a Tirtha supreme site of divine abode and acknowledged as a Government institution. It constituted a public religious endowment with all properties appertaining to it to be held in trust. Teeming masses principally professing Hindu religion thronged the site for divine audience and making devotional offerings in the shape of "Pranamees"(fee), "Naibedya", "Bhogh"(cooked rice), fruits, sweets, clothes,

ornaments, utensils etc.

6. History records that the Ahom Kings, their officers and agents constructed and repaired, to meet the growing exigencies, the main temple of Kamakhya and other subordinate temples and distributed vast stretches of immovable properties to ensure regular supply of all requisites for worship. Large number of Brahmins for higher religious services and nonBrahim Paiks for secondary/ subordinate services were also detailed. These Brahmin and nonBrahmin contingents comprised of "Shebaites" of this religious denomination. Whereas the Brahmin "Shebaites" for eliciting their services were separately granted land and other properties which devolved on their descendants, provision for maintenance of the nonBrahmins "Shebaites" out of the daily "Bhoga" (cooked offerings) in the temple and "Naibedyas" was made and in many cases separate endowments of land for enjoyment in lieu of the wages for the services to be rendered by them in the temples were accorded as well. Eventually the Brahmin donees held these lands as Brahmottar and Nisf Khiraj lands and the Paik donee families as Nisf Khiraj lands separately.

7. In addition, the Ahom kings used to appoint persons known as "Seba Choloas" for supervising the worship and other affairs relating to the temple and also for managing their properties. They, however, had no role in the internal management of the temples and the institution which rested in the principal families of priests generally known as "Burpujaris", "Bordeuris" or "Pandas". Though 4Seba Choloas" continued to function as such for some time, the principal families of priests called "Bordeuris" gradually rose in prominence and ultimately became the accepted governors of the trusts.

8. The traditional practice among the Bordeuris was to elect one of them as a "Doloi" whose duty was to supervise the religious rites and the customary tenets in the temple.

9. With the adoption of the policy of noninterference with the Hindu religious institutions by the British, the "Seba Choloas" were superceded and the management of the affairs of the conglomerate of the divine institutions, both religious and secular, were left to the "Dolois" thereof who enjoyed the undisputed confidence of the Shebaites called the "Bordeuris". This marked the supremacy of the "Dolois" as the manager of the trusts and endowments and they transacted all business on behalf of the temple under the "Bordeuris", conceptually construed and styled as the Board of Trustees. In the above capacity, the "Dolois" inter alia used to lease out lands, conduct suits and perform all necessary acts on behalf of the temple. This arrangement sought to drive a wedge amongst the "Shebaites" as those who were not "Bordeuris" felt alienated from the realm of management of the temples. The simmering discontentment snowballed with time precipitating in confrontative dispositions and spate of litigations. The proceedings in hand testify the flashpoint of the lingering stand off.

10. Having scripted the historical backdrop of the Devalayas, the pleadings on record with the rival projections, as essential to address the issues raised, need be noticed. The constitutional validity of Section 25 A of the Act had since been assailed before this Court in Civil Rule No. 3118/94 which, however, was negated by the judgment and order dated 2.5.2000. In terms thereof, the Deputy Commissioner, Kamrup, Guwahati passed an order dated 15.9.2000 constituting an adhoc Managing Committee under the above statutory provision. This order was impugned in W.P.(C) Nos. 5385/2000 and 6184/2000 by Sri Riju Prasad Sarma introducing himself to be the administrator and a member of the Board of Trustees of the Kamakha Debutter and Sri Kamal Chandra Sarma also in the capacity of a member of the said entity. Interim orders were passed in the said proceedings authorizing the Deputy Commissioner, Kamrup or his nominee, as the case may be, to discharge the functions of the Managing Committee to be constituted under Section 25 A of the Act to have control over the matter of utilization of the annuity and verification of the proper maintenance of the institution till a regular Committee thereunder was formed. In compliance of such interim orders, the Deputy Commissioner, Kamrup by his order dated 20.3.2002 appointed Sri S.K, Roy, Additional Deputy Commissioner, Kamrup to discharge the functions of the Managing Committee, "the aforementioned nominee, in turn, issued a notice proclaiming that the responsibility of the Managing Committee of Kamakhya Devalaya would be taken over on and from 26.4.2002. The fact of taking over such responsibility as notified was thereafter conveyed by the notice dated 6.5.2002 by the nominee.

11. The orders dated 20.3.2002, 25.4.2002 and 6.5.2002 were impeached in WP(C) No. 2955/2002 instituted by Sri Riju Prasad Sarma as above. This Court by order dated 13.5.2002 passed in WP(C) No. 2955/2002 directed that the respondents would not use the main "Bharal" and the existing office of the Kamakhya Debutter Board and further restrained them from interfering with the functioning of the sacred "Peethas" of Jol Kuber and Dhan Kuber and "all religious functions of the Kamakhya Temple". By the judgment and order dated 6.8.2004 impugned in W.A. Nos. 311 and 312 of 2004, the learned Single Judge while disapproving the arrangement sought to be effected by the order dated 15.9.2000, required the State Government to take all followup steps neecessary to constitute a regular Committee in accordance with Section 25 A of the Act within a period of three months.

12. The scheme effectuated by the interim orders dated 25.9.2000, 22.11.2000 and 13.5.2002 passed by this Court in the above referred writ petitions were allowed to continue visavis the administration of the secular affairs of the Devalaya till a regular Committee under Section 25 A of the Act was constituted. Sri Riju Prasad Sarma, as the administrator, Kamakhya Debutter, representing the deity Sri Sri Maa Kamakhya, a juristic person, has by laying a challenge to the viresoftheAct as a whole principally on the ground of lack of legislative competence, forged a new dimension to the existing protracted polemic. The prefatory facts, though overlap as the pleadings would display, bare essentials

thereof casewise have to be essentially laid.

No. 923/2005

13. The petitioner claims that the "Peethas" located over the Nilachal Hill including that of Goddess Sri Sri Maa Kamakhya, have since been installed as temples whereafter those were gifted with vast tracks of immovable properties by the Ahom kings for the maintenance thereof and also for ensuring regular supply of all requisites for "Sevas" and "Pujas" by a number of Brahmin and nonBrahmin "Shebaites" for carrying out different services in connection with religious activities. The properties were vested in the deity Sri Sri Maa Kamakhya as a juristic person. The lands received as gifts/ endowments by the deity were "Debutter" properties of the temple of the said Goddess and the services were to be rendered by a vast number of "Shebaites" like "Pujaris" comprising of the "Buras" and "Dekas", "Hotas", "Chandi Pathaks" and "Bidhi Pathaks" who were assigned specific and distinct functions. The endowment of the Kamakhya Temple comprised of 31,000 Bighas of Lakheraj (revenue free) land in addition to Brahmottar land settled with the "Shebaites" and "Paiks" of the temple at a rate equal to half of the revenue rate of the Kheraj leases. According to the petitioner, the endowment also comprised of Lakheraj land in the Nilachal Hills comprising of three hills of Bhubaneswari, Kamakhya and Barali as well as Durga Sarovar comprising of an area of 2565 Bigha, 3 Katha 19 Lechas which are revenue free. The Kamakhya temple has also been stated to own immovable properties in the town of Guwahati measuring an area of 13 1/2 Lechas under Patta No. 1062 and 1 Katha, 17 Lechas under Patta No. 1377 at Panbazar, Guwahati in the district of Kamrup.

14. The petitioner has denounced the Act as a legislation bereft of legislative competence of the State Legislature. The mandate of the Act to render the deity landless in purported attainment of the objectives thereof has been assailed to be beyond the purview of the State Legislature under Entry 42 of List III of the 7th Schedule to the Constitution of India. Without prejudice to this challenge, it has been asserted as well that the scheme prescribed by the Act for the investiture of the land in the Government has not been complied with and, thus, the Notification under Section 3 thereof does not in any manner bestow the lands in the State Government. Absolute denudation of the deity in the garb of the impugned enactment by offering a paltry annuity without according compensation computed on the market value of the lands has also been contended as a ground to assail the process of acquisition.

15. Section 25 A of the Act has been repudiated to be wholly extraneous to the domain of the Act and visibly unconnected with the objectives thereof as recited in its preamble. This provision in particular has also been questioned for having been incorporated without prior recommendation of a fact finding committee before seeking to take over the control of secular activities of a religious institution. That Section 25 A as an integral part of the Act cannot be construed to be a law within the purview of Article 25(2)(a) of the Constitution of India has also been

pleaded. It has been urged as well that Section 25A not being a part of a law enacted for the purpose of taking over the secular activities of the temple, it cannot be permitted to be invoked to interfere with the management thereof

16. The official respondents in their affidavit have, at the outset, questioned the locus standi of the petitioner to represent the deity. According to them, the Devalaya is managed and represented by the "Dolois" and the petitioner as the administrator of Kamakhya Debutter, is not a legally recognized entity. They have averred that no organisation named Kamakahya Debutter has been recorded as the manager of the Kamakha Devalaya in the existing land records. They have averred that huge stretches of lands donated by various kings in the name of Kamakhya Devalaya were not utilized and could not be managed by the temple and, thus, remained unused and in the state of jungles. Referring to the land records, the answering respondents have stated that out of the land acquired as a whole, 21743 Bighas was Lakheraj, 1846BighaNisfKheraj and 1314 Kheraj. The Act has been endorsed to be a valid piece of legislation for land reforms and for distribution of land in favour of landless tenants. Asserting in favour of the legislative competence of the State to enact the Act, the answering respondents have claimed successful implementation thereof contending that every year the State Government spends more than Rs. 50 Lakhs for payment of perpetual annuity to the concerned religious institution. That meanwhile the lands belonging to such 200 religious and charitable institutions have been acquired and distributed amongst lakhs of tenants and landless persons has been pleaded. Tracing the power of legislation of the enactment to Entry 18, List II of the Schedule 7 to the Constitution of India, the answering respondents have affirmed against imposition of uniform ceiling for all the institutions to obviate prejudicial consequences as the land required by them would vary according to their needs. Payment of a sum of Rs. 80,550/ at the rate of Rs. 3500/ per year by way of adinterim compensation for a span of 23 years (1969-1991) has been stated. The assailment of Section 25 A of the Act has been sought to be warded off by falling back on the judgment and order dated 2.5.2000 rendered by this Court in WP(C) No. 3118/ 94.

17. The respondent No.5 as the representative of the " Bordeuri Samaj", Kamakhya Temple has substantially echoed the stand of the official respondents. Besides challenging the locus standi of the petitioner on the ground that he is not the head of the religious institution in terms of Section 2(2) of the Act, the answering respondent has asserted that the petitioner is not recognized as an administrator of the Kamakya Devalaya. This respondent has maintained that all the lands and grants had been settled in the name of the then Dolois Ganga Prasad Sarma and Pran Nath Sarma who had been duly appointed as such by the Bordeuris of the Kamakya Temple. According to this respondent, the lands are not held by the deity and it has no possessory right thereon as well as is testified by the decision rendered by the Special Sub Judge, Assam Valley District dated 25.2.1931 in Title Suit No. 45/27. The validity of the Act has been ratified by this respondent to be in furtherance of public interest. The answering respondent has

stated that though meanwhile an amount of Rs. 80,500/ by way of adinterim compensation has been paid at the rate of Rs. 3500/ per year under Section 9 of the Act, compensation in the form of perpetual annuity over the acquired area could not be fixed for the failure on the part of the Head of the institution to submit return in Form "C" as required under the Act and the Rules framed thereunder. Incorporation of Section 25 A by the amendment of the Act in 1987, according to the respondents, has been made to strengthen the Managing Committee of the institution to have control over the matter of utilization of annuity and for verification of proper maintenance of the institution.

18. In his reply, the petitioner has averred that though prior to the year 1940 there used to be 1/2 "Dolois" from amongst the family of only "Bura" and "Deka", a new system was introduced since thereafter of appointing "Dolois" also from the families of "Bidhipathaks" and "Hotas", The system continued till 1970 when it was felt that the same was unworkable warranting a constitution to objectively regulate the same. "The Constitution for Management of Kamakya Temple Affairs in a Systematic Manner" was formulated and eventually submitted before the learned District Judge, Kamrup on 22.4.98. The petitioner has stated that on 25.10.98, a general meeting of the public comprising of "Pandas", "Pujaris" and "Purohits" etc. and other Brahmin and nonBrahmin "shebaites" of the temple was held in its precincts wherein a Regulation named as Kamakhya Debutter Regulation, 1998 (for short, hereinafter referred to as "the Regulation") was adopted for establishment of a General Board for managing the affairs of all kinds of properties of the Kamakhya Devalaya. Immediately thereafter a Board was constituted to manage the affairs of Kamakhya Devalaya in terms of Article 7 of the Regulation. The petitioner stated that this signalled the relinquishment of the earlier system of management. He pleaded further that apart from this constitution, there existed one more charter of identical kind framed in or about the year 1973 which too suggested absence of any custom governing the affairs of the Kamakhya Temple and instead acknowledged practices and systems of practical relevance and significance to cater to the exigencies of time. The constitution laid before the Court as above according to the petitioner, effectively remedied the uncertain and indeterminate norms of functioning to usher in an improved system of management of the religious institution. The petitioner has, therefore, underlined that with the Regulation in place, the management of the institution is being administered in accordance with democratic precepts by abandoning the then existing autocratic system confined to the four families led by the "Dolois". The existing "Doloi"/Chairman of Kamakhya Debutter having expressed his inability to continue in office vide his letter dated 4.4.99 on health ground, the charge of the office of the Kamakha Debutter Board was handed over to Paran Ch. Sarma (since deceased) and on the demise of the intermediate Chairman, Sri Kamal Ch. Sarma was appointed as such. The petitioner has farther asserted that since thereafter the "Bordeuris" are not the only persons who are entitled to hold the office of the "Doloi" and that the other "Shebaites" too are equally qualified to assume the same. Relying on the determination made

by the learned Single Judge in the judgment and order dated 6.8.2004 rendered, amongst others, in WP(C) No. 5385/2000, the petitioner has contended that the issue of his locus standi is not longer res Integra, the same having been decided in his favour therein. The petitioner has claimed that as permitted by the learned Single Judge, the administration of the temple is being managed and conducted by the Board as on date.

W.P.f (C) No. 5385/2000

19. The writ petitioner, Sri Riju Prasad Sarma (appellant in W. A. No. 311 /2004) has asseverated that being inspired by the judgment and order dated 2.5.2000 passed by this Court in C.R. Nos. 3118/94 and 62211 98, a handful of "Shebaites" belonging to only four families known as "Bordeuris" of Kamakhya Temple prevailed over the Deputy Commissioner, Kamrup, Guwahati to pass the order dated 15.9.2000 to constitute an adhoc Committee in utter violation of the letter and spirit of the decision. In endorsement of the plea of untenability of the order dated 15.9.2000, the writ petitioner maintained that three persons, namely, Sri Sasikanta Sarma, Sri Tara Pada Sarma and Sri Jadu Nath Sarma had instituted a civil suit against Sri Jnanada Prasad Sarma and Sri Paran Ch. Sarma relating to the charge of the management of the Kamakhya Temple which was pending in the Court of the Civil Judge (Jr. Division) No.2, Kamrup at Guwahati.

20. It was asserted as well that in view of the pendency of WP(C) No. 2531/99 in which the Deputy Commissioner, Kamrup had been impleaded as respondent No.2 pertaining to the issue of settlement of land of the Kamakhya Temple, it was impracticable to hand over the charge of the administration thereof to a person against whom a litigation was pending. According to the petitioner, the State authority (respondent No.2) was not authorised to dissolve the existing Managing Committee as sought to be done by his aforementioned order. The petitioner asserted that in fact no Managing Committee existed to be dissolved and to the contrary the affairs of the Kamakhya Temple was, at the relevant time, being managed by the Board of Trustees constituted in accordance with the Regulation. While reiterating that the perpetual annuity to be paid to the management of the Kamakhya Devalaya had neither been fixed nor released, the background in which the old system of electing "Dolois" by a handful of privileged "Shebaites" has been dismissed was reiterated. The petitioner asserted that Section 25A of the Act can be enforced only on payment of the compensation to the religious institution concerned as provided under Section 7 thereof. The petitioner asserted as well that the impugned order which enjoined formation of an adhoc committee only by the "Bordeuris" from amongst the entire community of Brahmins and nonBrahmins" Shebaits" was visibly illegal and undemocratic as well. The order was challenged also on the ground of violation of the principles of natural justice, the same having been passed without affording any opportunity to the members of the existing Board of Trustees as well as the " Shebaits" who had instituted C.R. (PIL) No. 35/97 seeking implementation of Section 25A of the Act. The impugned order was also

impeached to be transgressive of Article 25(2)(a) & (b) of the Constitution of India.

21. The respondent No.2 in his affidavit dismissed the Regulation claimed to have been adopted in a public meeting held on 25.10.98 as nonest sans legislative recognition. The answering respondent without prejudice to this stand, questioned the locus of the petitioner even in terms of Clause 15 & 38 of the Regulation contending that one of the "Dolois" as the Chairman of the "Debutter" in terms of Section 38 of the Regulation had expressed his willingness to relinquish the charge of his office to facilitate formation of the Managing Committee under Section 25A of the Act and justified the formation of the Adhoc Committee as a stopgap arrangement to look after the affairs of the temple till regular election was held as per this statutory provision. While reiterating that Sri Jnanada Prasad Sarma as a "Doloi" of the Kamakhya Temple was the religious and temporal head thereof, the answering respondent clarified that the perpetual annuity of the institution could not be fixed as the concerned authority thereof did not submit the demand in Form "C" as required under Section 11 of the Act read with Rule 9 of the Rules framed thereunder.

W.P.(C) NO. 6184/2000

22. The petitioners representing the Board have assailed the order dated 15.9.2000 of the Deputy Commissioner, Kamrup constituting an adhoc Committee to administer the management of the temple till regular election is held for the constitution of the Managing Committee as per Section 25 A of the Act and also directing thereby that the charge of the office of the Devalaya be handed over to it. Reiterating the framing of the Regulations nomenclature as "Kamakhya Debutter Regulations, 1998" in a public meeting held on 25.10.98 attended by all the Brahmin and nonBrahmin "Shebaites" of the Kamakhya Debutter and the constitution of the Board in terms of Article 7 thereof, the petitioners have asserted that as per Article 17 of the Regulations the term of the office of the Board is five years and, as such, it was functional on the date on which the impugned order was passed. The petitioners have asserted that following the dismissal of C.R. No. 3118/94 instituted on behalf of the Satradhikar of Bengana Ati Satra impugning the vires of Section 25A of the Act vide the judgment and order dated 2.5.2000 of this Court, a handful of "Shebaites" belonging to four families of Kamakhya Temple had influenced the Deputy Commissioner, Kamrup (respondent No.2) to pass the order dated 15.9.2000 in purported compliance of the said decision of this Court directing dissolution of the subsisting Managing Committee headed by Sri Jnanada Prasad Sarma and Sri Paran Ch. Sarma. It has been pleaded that as by the judgment and order dated 2.5.2000 the official respondents were neither permitted nor directed to dissolve the then existing Committee or to constitute any adhoc Managing Committee to manage the affairs of the Kamakhya Debutter, the impugned order was in contemptuous disregard thereto. The petitioners contended that the constitution of an adhoc Managing Committee was neither

contemplated nor countenanced by the Act. The impugned order, thus, was assailed to be vitiated by lack of authority and genuineness of purpose besides being violative of the principles of natural justice as no opportunity of hearing had been accorded either to the Board or the petitioners.

23. The Commissioner and Secretary to the Govt. of Assam, Revenue Department in his counterwhile clarifying that the perpetual annuity of the Kamakahya Debutter had not been fixed as demand in Form C to be submitted by it under the Act had not been furnished in time and that as a consequence the Government had sanctioned an adinterim annuity at the rate of Rs. 3 500/per annum totaling Rs. 80,500/ for the period 1375 B.S. to 1397 B.S. asserted as well that the adinterim annuity for the period thereafter could not be released for the failure of the Debutter to submit utilization certificate for the amounts already sanctioned. The deponent emphasized the need for constitution of a proper Managing Committee as contemplated under Section 25 A of the Act in view of the failure of the two "Dolois" forming the Temple Committee/Trust even after the expiry of its term of five years as well as for nonfurnishing any account of the money received from the devotees and other sources for the religious institution. The deponent clarified that as a first step, a draft voters' list was to be prepared for finalizing the same after inviting objections, if any, and thereafter conduct election on the basis thereof. The answering respondent, therefore, emphasized on the necessity of the adhoc Committee for working out the said modalities for the implementation of the mandate of Section 25 A of the Act.

24. The Deputy Commissioner, Kamrup (respondent No.2) while affirming the stand of the respondent No. 1 as above pleaded in his affidavit that the adhoc Committee would complete the election within a period of one month facilitating the installation of a new Committee. The deponent reiterated that the purpose of constituting the adhoc Committee was to effectuate the election of the Managing Committee for the temple and the initiative was to gear up the essential steps contributing to that end. The answering respondent dismissed the Regulations as bereft of any significance or relevance for want of legislative concurrence. According to the answering respondent, the Bordeuris of the temple only have the right of voting in the election as envisaged in Section 25A. The following steps in succession encompassing the process of election were set out as comprehended:

- a) Proper publication of the list of "Bordeuris" of the Kamakhya Temple;
- b) Publication of the final list of "Bordeuris" after receipt and disposal of claims/objections.
- c) Filing of nominations;
- d) Scrutiny of nomination papers;
- e) Holding of elections.

He underlined that the adhoc Committee had been constituted to pursue these steps in conformity with the letter and spirit of Section 25A. That the order dated 15.9.2000 was not inconsistent with the determination made vide the judgment and order dated 2.5.2000 rendered in C.R. No. 3118/94 was accented upon. The deponent stated that the Committee headed by Sri Gnanada Prasad Sarma had been formed in the year 1991 92 and that the formation of a new body was long over due. As the existing Committee, did not allow constitution of a new body, many members of the "Bordeuri Samaj" requested the Government for its intervention. The answering respondent also pleaded that Sri Gnanada Prasad Sarma, one of the "Dolois" of the existing Committee had also expressed his willingness to relinquish the charge of his office to pave the way for the formation of the Managing Committee under Section 25A.

25. In reply to the pleadings of the respondents as summarized hereinabove, the petitioners pleaded that the present management of the Kamakhya Debutter is preparing to hold elections as per the Regulations and that the interference of the respondent No. 2 was thus, wholly unwarranted. That the Board under the Regulations had taken sufficient care to ensure that the funds of the temple are not misutilised and misappropriated was iterated as well. They asserted that a Managing Committee under Section 25 A of the Act can be constituted to have control over the utilization of the annuity if the land belonging to the religious institution is finally acquired and the amount of annuity payable is fixed for verification of proper maintenance of the institution. As the said process is still incomplete, the constitution of the Managing Committee under Section 25 A of the Act is impermissible. According to the petitioners, not only the Bordeuris of Kamakha Temple but even those of "Nanaan" Devalayas and the Deoris have the right to vote and can be elected as exofficio Secretary as envisaged in Section 25A. They have reiterated that the resident devotees comprising of Brahmin and nonBrahmin Shebaites form the Electoral College under the Act. The act of handpicking respondent Nos, 3 to 8 as members of the adhoc Committee has also been impeached. While denying the right in the four families of Bordeuris of Kamakya Temple only to elect a Doloi, the petitioners ascribed senility to Sri Gnanada Prasad Sarma disentiing him to continue either as a member or the Chairman of the Board under the Regulations. His willingness to hand over the charge of the office of the Committee was thus rejected by the petitioners as of no import. The petitioners claimed that after the dissolution of the Committee formed in the year 1991 headed by Jnanada Prasad Sarma (since deceased), the management of the Kamakhya Endowment was vested in the Board constituted under the Regulations, the term whereof on the date of passing of the order dated 15.9.2000 was yet to expire.

W.P.(Q 2955/2002

26. The petitioner as the administrator of the Kamakhya Debutter on the same set of pleaded facts assailed the order dated 18/ 20.3.2002 of the Deputy Commissioner, Kamrup appointing the respondent No.3 to discharge the

functions of the Managing Committee to be constituted under Section 25 A of the Act till a regular body thereunder was formed. The consequential notices dated 25.4.2002 and 6.5.2002 were also questioned as a corollary. As the averments contained in the counters filed by the respondent Nos. 3 to 8 and the affidavit in reply filed by the petitioner do not disclose any new factual assertion, it is considered inessential to traverse the same in details.

27. In the backdrop of the above matrix of pleadings, Mr. Mishra has assiduously argued that the Act is repugnant to the constitutional scheme of agrarian reforms and is, thus, liable to be adjudged nonest and void in law. Referring to its Statement of Objects and Reasons, the learned senior counsel has urged that as the same suggests that the enactment is one for agrarian reforms, it to be valid has to essentially conform to the imperative features of a legislation of the same genre. According to him, the scope of determination qua the challenge made to the vires of the Act in the earlier round of litigation being totally different, the present impugnement based on repugnancy to the constitutional scheme of agrarian reforms is not barred. Mr. Mishra has insisted that the Act having received the assent of the President though is protected under Article 31A of the Constitution of India, it having been included in Schedule 9 thereof, the Amendment Act of 1987 having been assented to only by the Governor of Assam, is not entitled to any insulation from the impugnments otherwise recognizable in law. Section 25 A introduced by the Amendment Act of 1987, thus, does not enjoy the protective umbrage of Schedule 9 to the Constitution of India only on the ground that the same has been eventually integrated into the Act, he urged. Such a protection is, thus, not automatic, he maintained. Even otherwise, the learned senior counsel argued that Section 25 A is wholly unrelated to the professed object of the parent enactment and is, thus, on its face ultra vires the Act and is liable to be adjudged as such.

28. Referring to the Act as a whole without prejudice to the above, Mr. Mishra has contended that in an enactment to secure agrarian reforms the right of the landlord, though may be modified and/or curtailed, cannot be annihilated in full as unlike a law for acquisition of land, a token compensation by way of annuity is granted therefor and the surplus land is distributed in furtherance of the objectives of the legislation. Mr. Mishra, thus, argued that any enactment proclaimed to be one for agrarian reforms must obligatorily comport to this abiding philosophy of the constitutional scheme, departure therefrom being antithetic thereto. The learned senior counsel urged with reference to Entry 18 of List II of Schedule 7 to the Constitution and Article 246(3) that the same enables the State legislature to make law for agrarian reforms and the same to be constitutionally valid has to compulsorily adhere to the inherent characteristics thereof, namely, curtailment of the right of the landlord with a ceiling thereof, investiture of the excess land in the Government, acquisition or taking over possession thereof by the Government, payment of token compensation by way of annuity and distribution of the excess land to the landless and needy. As the Act under impeachment though posed to be one for agrarian reforms is neither

possessed of these attributes nor provide therefor, it is vividly unconstitutional, null and void, he pleaded.

29. Referring to Section 3,4,5,18 and 19 in particular, the learned senior counsel has asserted that it is apparent therefrom that the Notification under Section 3 for the acquisition has to follow the procedure comprehended in Section 18, 19 and 20. As the Notification whereby the religious institution is sought to be divested of its land as a whole had been issued before traversing the procedure compulsorily required to be undertaken under Section 18,19 and 20 of the Act, it is on that ground alone liable to be adjudged null and void. That the petitioner's assertion in WP(C) No. 935/2005 to this effect has remained unrefuted was also underlined with reference to the relevant pleadings. According to Mr. Mishra, the requirement of taking over of possession of the land by the jurisdictional Deputy Commissioner being a precondition for complete investiture thereof in a Government signifies the indispensability of the prior compliance of Section 18,19 and 20 and, thus, in view of the violation of the legislative scheme of the Act as well, the entire process is vitiated by an incurable illegality, he pleaded. In reiteration of his contention that a law contemplated under Entry 18 of Schedule 2 to the Constitution for agrarian reforms does not envisage total effacement of the rights of the landlord but at best curtailment thereof to the extent indispensable, Mr. Mishra has urged that Section 4 and 5 being in obvious transgression of this constitutional grundnorm, the enactment as a whole is a fraud on the legislative power. The learned senior counsel argued that as the religious institution was beyond the purview of any ceiling law before the enactment of the impugned Act, the provisions contained therein to divest it of its rights in its lands and making it wholly dependent on Government annuity are wholly indefensible by any norm of legislative interpretation to save the same from the vice of unconstitutionality. Moreover, as most of the lands sought to be taken over are incapable of being utilized/ applied for land reforms or agrarian reforms, the Act is a purported legislation besides being incompatible with the constitutional model prescribed therefor. The learned senior counsel, however, has fairly contended that while the processes which have meanwhile attained finality ought not to be reversed, those contemplated visavis the nonagricultural lands and other lands incapable of being used for agricultural purpose ought to be declared as invalid.

30. With specific reference to Section 25 A, Mr. Mishra has contended that as the same seeks to take control of the secular activities of the religious institution as contemplated under Article 25/26 of the Constitution of India, it is not only necessary to be comprehensive but also ought to be preceded by an exhaustive fact finding enquiry to adequately attend to the relevant facets thereof. As Section 25A has been enacted without undertaking such an exercise, on that ground as well, it is liable to be adjudged ultra vires the Constitution. In endorsement of this plea, the learned senior counsel in addition to judicial pronouncements also relied upon Article 26(d) of the Constitution of India.

31. Mr. Mishra farther urged that Section 25 A suffers from the affliction of gross vagueness and uncertainty, inasmuch as, it does not provide any guideline whatsoever to conduct the process for election contemplated thereunder as well as the modalities visavis the steps involved in such an exercise. As this provision has the potential of conferring arbitrary and unbridled power unlike similar enactments in force, the same is liable to be struck down as unconstitutional, he urged. He denounced the validity of the notice dated 9.10.2004 notifying the schedule for election of Doloi(s) in the exercise of the executive fiat of the jurisdictional Deputy Commissioner/Sub Divisional Officer without any authority. To reinforce his argument, Mr. Mishra has placed reliance on the following decisions:

- i) 2000 (2) GLT 286 : Satradhikar, Bengana Ati Satra & Anr, Vs. State of Asam
- ii) AIR 1966A&N51: Jiten Ch Sarma Doloi Vs. State of Assam & Ors.
- iii) (1980) 4 SCC 716 : S.S. Maiti Vs. Union of India
- iv) AIR 1965 SC 345: Sajjan Singh Vs. State of Rajasthan
- v) "(1975) 1 SCC 696: Godavari Sugar Mills S.B. Kamble & Ors.
- vi) AIR 1973 Gau 87: Hiranya Kr. Barthakur Vs. P.C. Saikia & Ors.
- vii) (1983) 1 SCC 305: D.S. Nahara Vs. Union of India
- viii) (1985) 1 SCC 479:Lingappa Pochanna Appelwar Vs. State of Maharashtra & Anr.
- ix) (1981) 2 SCC 362: Woman Rao & Anr. Vs. Union of India
- x) AIR 1959 Assam 147:Anil Kr. Bhattacharjee D.C. & Collector &Anr.
- xi) (2002) 8 SCC 106: N. Adithayan Vs. Travancore etc.
- xii)AIR 1959SC519: Atmaram Vs. State of Punjab & Ors.
- xiii) (1971) 2 SCC 893: Jagannathetc. Vs. The Authorised Officer, Land Reforms & Ors.
- xiv) (1974) 2SCC253: Kh. Fida Ali & Ors. Vs. State of Jammu & Kashmir
- xv) (1990) 4 SCC 102: Union Territory of Goa, Daman & Diu & Anr. Vs. Lakshmibai Narayan Patil & Ors.
- xvi) (2009) 12 SCC 378: State of Orissa Vs. Harapriya Bisoi
- xvii) (1999) 3 SCC 231: Omprakash Agarwal Vs. B. Behera & Anr.
- xviii) (1967) SC 1643: C. Golak Nath & Ors. Vs. State of Punjab & Ors.
- xix) (2007) 3 SCC 557: P. V. George & Anr. Vs. State of Kerala & Anr.
- xx) (2002) 9 SCC 441: Sreedharan S. Vs. State of Karnalaka & Anr.

- xxi) (1997) 8 SCC 522: S.S. Bola & Anr. Vs. B.D. Sardana & Ors.
- xxii) (2005) 5 SCC 420: Prof. Yashpal & Anr. Vs. State of Chattisgarh
- xxiii) (2002) 8 SCC 228: Union of India & Anr. Vs. Shah Goverdhan L. Kabra Teachers "College.
- xxiv) AIR 1941 Federal Court 47: A. L. Suhramaniyan Chettiar Vs. Muttuswami Goverdan.
- xxv) (2996) 2 SCC 498: Pannalal Bansilal Pithi Vs. State of A. P. & Ors.
- xxvi) (1997) 4 SCC 606: Shri Adi Visheshwara etc. Vs. State of U.P & Ors.
- xxvii) AIR 1967 SC 1427: S.G. Jaisinghani Vs. Union of India & Ors.
- xxviii) (1974) 1 SCC 549: State of Punjab & Ors, Vs. Khan Chand
- xxix) (1985) 1 SCC 234: State of Maharashtra Vs. Mr. Kamal etc.
- xxx) (1996) I SCC 1: Harbilas Rai Bansal Vs. State of Punjab & Anr.
- xxxi) (2005) 2 SCC 317, Subramanian Swamy (Dr.) Vs. Director, CBI & Ors.

32. Mr. Bhattacharjee has submitted that as no annuity under the Act following the acquisition of the lands of the religious institution has been paid in full as on date, the State Government by no means can be allowed to control the affairs thereof. While submitting on instructions that his respondents are not averse to the election, the learned senior counsel insisted that the same, however, has to be strictly in accordance with law. He, however, pointed out that the judgment and order impugned in the instant appeals cannot be implemented in absence of Rules for actualizing the enjoinments of Section 25 A. Mr. Bhattacharjee endorsed the plea that Section 25 A was alien to the setting of the Act projected as a legislation for land reforms. He also reiterated that this provision was inexplicably arid and, thus, capable of being abused. The learned senior counsel underlined that it was impermissible to form a regular Committee under Section 25 A as observed in the impugned judgment and order. Mr. Bhattacharjee maintained that Section 25A does not satisfy the requirement(s) of Article 25(1) (a) of the Constitution of India and that the impugned notice of election is a wholly unauthorized and imperious initiative of the jurisdictional Deputy Commissioner.

33. Mr. Das in reply to the above, has submitted that the Act as any other instrument of legislation enjoys a presumption of validity, more particularly, having regard to the avowed purpose thereof. The learned senior counsel pleaded that in assaying the provisions thereof, its background as well as societal exigencies and the measures to address the same ought not to be lost sight of. The Act being a postconstitutional law informed with the salutary goal of enhancing the quality of life of the citizenry in general through social and economic emancipation, the challenge to the validity thereof ought not to be lightly entertained. Contending that the challenge to the vires of the enactment

is open only on two grounds, namely, lack of legislative competence and transgression of constitutional rights, Mr. Das has urged that the impugned Act conforms to the constitutional ideology engrafted in Article 39(b) and (c) of the Constitution of India and is, thus, beyond reproach. He insisted that the impugned enactment is one to further land reforms which are not per se limited to the agrarian confines only and are extendable to the use of land for variety of purposes including industrialization. Mr. Das dismissed the plea of total extinction of the rights of the landlord contending that the provision of the Act duly secure the right of the religious institution to possess, occupy and enjoy the lands which they would elect to retain. He referred to Section 3 and 5 of the Act to reinforce this contention.

34. Referring to Section 15 and 16 of the Act, the learned senior counsel also endorsed the validity thereof pleading that the manner of utilization of the land acquired as envisaged therein was in full consonance with the notion of land reforms as known in law. While emphasizing that the Act was within the domain of Entry 18 of List II of Schedule 7 to the Constitution of India, the learned senior counsel insisted that "land" as mentioned therein was not necessarily restricted to agricultural land and that land reforms comprehended, amongst others, establishment of industries, cooperative societies etc. He urged further that the legislative entries in the lists to Schedule 7 of the Constitution envision only the themes of the legislation and not the source of power thereof and pleaded that both the Act impugned as well as Section 25 A had an exigent background there for and that the plea to the contrary is wholly misleading. Drawing the attention of this Court to the fact that impugnement of Section 25 A had once been examined by this Court and answered in the negative in *Satradhikar*, *Bengana Ati Satra* etc. (supra), the learned senior counsel maintained that successive assailments on fresh grounds are impermissible as the same would otherwise undermine the guarantee of finality of judicial verdicts. According to Mr. Das, the perception of vagueness and in determinability of Section 25 A is wholly conjectural and the details of the steps for the elections as contemplated therein can be worked out if necessary on the basis of a consensus. He pointed out in this regard that the rigour of election law as in parliamentary and assembly elections need not necessarily apply in the eventuality contemplated by Section 25 A. he also distinguished the authorities cited by Mr. Mishra and Mr. Bhattacharjee and also drew sustenance for his arguments from the following decisions:

- i) AIR 1951 SC 41: *Chairanjit Lal Choudhury Vs. Union of India & Ors.*
- ii) (1997) 2 SCC 453: *State of Bihar & ors. Vs. Bihar Distillery Ltd. & Ors.*
- iii) (2008) 4 SCC 720: *Govt. A.P. & Ors Vs. P. Laxmi Devi (Smt.)*
- iv) (2005) 10 SCC 110: *State of W.B. Vs. Ashish Kr. Roy & Ors.*
- v) AIR 19 75 SC 1193: *Godavari Sugar Mills Ltd. Vs. S.B. Kamble & Ors.*
- vi) AIR 1967SC 856: *Ajit Singh Vs. State of Punjab & Ors.*

- vii) (1995) Supp. 2 SCC 394: Kanwarlat Vs. IInd Addl. DJ. Nainital & Ors.
- viii) (1980) 3 SCC 719: Ambika Pd Misra Vs. State of U.P. & Ors.
- ix) AIR 1995 SC 142, Jijubhai Nanbhai Khachar Vs. State of Gujarat & Ors.
- x) (2007) 6 SCC 236: Greater Bombay Coop. Bank Ltd. Vs. United Yarn Tex. (P) & Ors.
- xi) (1996) 3 SCC 709: State of A.P. Vs. McDowell & Co. & Ors.
- xii) (2003) 5 SCC 239: State of W.B & Anr. Vs. E.I.T.A India Ltd. & Ors.

Reliance was also placed on paragraph 436 of Constitutional Law of India Seervai, 4th Edition.

35. Mr. Sarma Baruah (since deceased) while adopting the arguments of Mr. Das in general, had submitted that in the litigational background though challenge to the Act for want of legislative competence cannot be said to be barred, the validity of Section 25 A having been upheld by this Court in *Satradhikar, Bengana Ati Satra* (supra), it is beyond the ken of the present impugment. The learned counsel questioned the locus standi of the petitioner Riju Prasad Sarma to represent the deity and insisted that in terms of Section 2(d) of the Act only the Dolois were entitled to do so. He referred to the decision in *Baroda Kanta Deba Sarma Deka Bordeuri & Anr. Vs. Bangshi nath Deba Sarma Bidhipatak Bardeuri & Ors.*, AIR 1940 CAL 269 which recognized the office of Doloiship and pleaded that a Doloi being the head of the institution as per the custom prevalent, only he in law can represent the deity. He also referred to the judgment and order dated 25.2.1931 in T.S. 45/1927, *Jibanram Balikata & Ors. Of Kamakhya Vs. Bistuprasad Sarma Daloi & Ors. of Ditto* passed by the Id. Special Sub Judge, Assam Valley Districts at Gauhati to underline that Bordeuris are the trustees of the religious institution and submitted that Section 25A did not seek to interfere with the religious activities of the temple.

36. Mr. Pathak while adopting the arguments of Mr. Das and Mr. Sarma Baruah contended that Kamakhya Debutter had no legal status or entity in law. Tracing the history of the religious institution and, more particularly, the manner of election of Dolois as per the age old custom, the learned senior counsel pleaded that the five families of Bordeuris were the de facto trustees of the Kamakhya Endowment entrusted with the pious role of conducting secular and religious activities related thereto. According to Mr. Pathak, the ostensible legal tussle is one for wresting the ultimate control of power to administer the secular and religious activities of the institution and that in public interest as well as in reverence to the religious sentiment of the innumerable devotees of the deity, elections in terms of the earlier practice ought to be conducted. According to him, neither the challenge to the validity of the Act or Section 25A thereof nor the legal issues raised really touch upon the election of Dolois essentially from the five families of Bordeuris as per the practice followed from the time immemorial. The learned senior counsel also referred to the judgment in

Jibanram Balikata (supra) to be of determinative relevance in this regard.

37. Mr. Buragohain, learned Addl. Advocate General, Assam while affirming that the impugned Act is within the ambit of Entry 18 of List 11 of Schedule 7 to the Constitution, has asserted that the enactment was not an abrupt act of legislation but has been designed in the context of the prevalent land policy to acquire unutilized lands and distribute the same to the landless. He referred to the book "Land Laws of Assam" by K.C. Mazumdar, J.N. Choudhury, G.C. Phukanto demonstrate the acquisition of similar lands of other religious institutions under the Act. Referring to the provisions of the impugned legislation, Mr. Buragohain dismissed the challenge based on supposed extinction of right of the religious institution, contending that in terms thereof the land released by it (religious institution) had only been acquired and, thus, no ceiling on the area has been contemplated. Lack of any provision for ceiling of the land to be acquired, thus, is not a vitiating factor, he urged. While endorsing the validity of Section 25A, Mr. Buragohain with reference to a copy of the Jamabandi relating to Fancy Bazar, Guwahati has argued that the lands located at that site and belonging to the religious institution still remain recorded in its name.

38. Mr. Mishra in his reply has submitted that in the appeals filed by the petitioners in WP(C) No. 935/2005 the impugnement is against the finding ascribing a limited role to the Managing Committee under Section 25 A of the Act visavis the annuity paid. As the learned Single Judge had negated the challenge to the locus standi of the petitioner/appellants, the same cannot be reopened, he maintained. The learned senior counsel has argued that the observations made by the learned Single Judge taking note of the transitional phases pertaining to the election of Dolois signify the discontinuance of the custom in connection therewith. Reliance was also placed on Para 401 of Halsbury's Laws of England (4th Edition) and the dictionary meaning of "Legal Memory" to neuter the claim of decisive significance of custom in the matter of elections. Mr. Mishra also pleaded that the challenge to the Act and Section 25 A cannot be debarred on the principle of res judicata as the parties involved and the issues raised are distinctly different from those in the earlier outings. The contention against permissibility of a challenge to a legislation on the ground that the parliament is supreme was also strongly refuted. The following decisions were relied upon in addition by Mr. Mishra in support of his aforestated arguments:

i) AIR 1927 Privy Council 128, Radha Binode Mandal Vs. Shri Shri Gopal Jiu Thakur & Ors.

ii) AIR 1951 SC 458, Shankari Prasad Singh Deo Vs. Union of India & Ors.

in) AIR 1965 SC 745, Powers, Privileges and Immunities of State Legislatures, Re.

iv) (2007) 3 SCC 184, Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha & Ors.

v) (1988) 4 SCC 324, Accountant & Secretaries Services (P) Ltd. & Anr. Vs. Union of India.

vi) AIR 1955 SC 661, Bengal Immunity Compalt Ltd. Vs. State of Bihar & Ors.

39. We have lent our anxious consideration to the rival pleadings and the insightful arguments founded thereon. Certain fringe issues need be dealt with before adverting to the core aspects of the lingering slugfest.

40. The locus standi of the petitioners) in WP(C) Nos. 5385/2000, 6184/2000 and 2955/2002 has been questioned. On that anvil, the representation of the deity in WP(C) No. 923/2005 by the petitioner in WP(C) No. 5385/2000 has also been repudiated as wanting in authority. As would be apparent on the face of the records, whereas the petitioners in WP(C) Nos. 5385/2000 and 6184/2000 have described themselves to be the Administrator/ Chairman of the Board, the deity in WP(C) No. 923/2005 is represented by the petitioner in WP(C) No. 5385/2000 in the capacity of the administrator of the Board. Noticeably, the petitioners have not instituted the writ proceedings in a representative capacity on behalf of the "Shebaitis" in general. The respondents have persistently dismissed the validity of the Regulation and consequently the legal status of the Board to permit such representation to enable the initiation of the Us on the issues seeking adjudication.

41. The Kamakhya endowment, as adverted to hereinbefore, personifies the supreme seat of divine abode of the deity, Ma Kamakhya and is acknowledged to be a Government institution. The records testify that it is a religious endowment of public nature with all its properties to be held in trust. The parties are not at issue that historically, as the chronicles of the contemporaneous judicial determinations evince, the traditional practice amongst the "Bordeuris" i.e. principal families of priests was to elect one of them as the "Doloi" whose duty was to supervise the religious rites and the customary rituals in the temple. As per the policy of noninterference with the Hindu religious institutions by the British, both religious and secular affairs of the institution were left to the "Dolois" who enjoyed the unqualified confidence of the "Shebaitis" called the Bordeuris.

42. The "Dolois" as the manager of the trust and endowment, thus, transacted all business on behalf of the temple under the "Bordeuris". As the text of the decision dated 25.2.1931 rendered by the Court of the Special SubJudge, Assam Valley Districts, Guwahati in T.S. No. 45 of 1927 would reveal, the "Bordeuris" whose forefathers constituted the 5 principal families of priests attached to the main temple at Kamakhya were not only the de facto but also de jure trustees of the entire concern in the Kamakhya Scheme of endowment and the "Dolois" were really their agents or managers. The groups of these "Bordeuris" constituted the Board of Trustees or Governing Body who whom the "Dolois" were answerable to submit accounts. The Board was competent to dismiss a "Doloi" for incapacity and mismanagement and to reappoint another "Doloi". As scripted therein, the preliminary and original donors and founders of the endowment had been old Assam Kings of the Ahom Dynasty. Referring to the decree of the Sadar Dewani Adalat of Calcutta, dated 1838, it was recorded

therein that none of the other Brahmins at Kamakhya or elsewhere had any right, power or authority of even touching or handling the Goddess at Nilachal Kamakhya Temple proper. Besides, the ancient five houses of "Pandas" were hereditarily assigned the duty of conducting the worship (Sevapooja). These findings, as the judgments referred to would substantiate, are the conclusions culled from a series of judicial decisions on the related issues and most significantly have not as such been disputed by the petitioners apart from contending that the system of election of "Dolois" by the identified families of "Bordeuris" was consciously done away within the year 1970 followed by the emergence of the Regulation in the year 1998 and the Board contemplated therein. It is, however, not the case of the petitioners that any election since then has been held.

43. The Title as well as the Preamble of the Act introduced the enactment to be one for the acquisition by the State all lands belonging to religious or charitable institutions of public nature. The definition of "head of a religious or charitable institution", "institution", "religious institution", "religious or charitable institution of public nature" being of considerable significance, are quoted hereinbelow:

"The Head of a religious or charitable institution in so far as it relates to the institution shall mean a person, by whatever designation known in whom the control and management of the properties of that institution is vested whether under the terms of any enactment or grant or usages relating to this institution or any scheme of management framed by a Court under section 92 of the Code of Civil Procedure, 1908 (Act V of 1908);

"Institution" means a religious or charitable institution of public nature including its branches, if any, established prior to the commencement of this Act and existing at the date of such commencement;

"Religious Institution" means an institution the primary purpose of which relate exclusively to religious teachings or worship or advancement of religious irrespective of denomination; "Religious or Charitable Institutions of Public Nature" shall include Satras, Maths, public temples, public Wakfs (that is to say, Wakfs other than Wadkalalaulad) including public Mosques and Durgahs, Gurudwaras, churches or similar institutions or endowments for public purposes of charitable or religious nature." Section 3 contemplates a notification whereby the rights of the religious or charitable institution in the land acquired would thereafter vest in the State free from all encumbrances. Section 5 which confers a privilege to a religious or charitable institution to retain possession of its land as referred to therein even after the acquisition also does not refer to the deity. Compensation under Section 7 for the acquisition of land is payable to the religious or charitable institution concerned to be received by its Head. The Head of a religious or charitable institution, under Section 18 is required to submit to the Deputy Commissioner a return giving particulars of all lands sought to be retained under Section 5. The process of publication of the final statement of the

land acquired and allowed to be retained as envisaged in Section 20 also postulates grant of opportunity only to the Head of the religious or charitable institution concerned of being heard.

44. In the scheme of the Act, therefore, neither the deity figures as the owner of the lands of the religious institution, nor has any other role been assigned to it thereunder. The organizational genome as existing on the date of the enactment was left intact.

45. Having regard to the background of the initiation of the present legal tussle, the challenge to be tenable in law has to be essentially either on behalf of the institution concerned in a representative capacity espousing the cause of the constituents thereof as a whole. The proceedings in hand are not in the nature of Public Interest Litigation. As the Act would suggest, the institution has to be represented by its head as defined in Section 2(d) i.e. a person in whom the control and management of the properties thereof is vested whether under the terms of any enactment or grant or usage relating thereto or any scheme of management framed by a Court under Section 92 of the Code of Civil Procedure, 1908. The petitioner(s), admittedly, do not satisfy any of these prescriptions. As alluded hereinabove, they are not before this Court as representatives of the "Shebais" as a whole. They have clearly designated themselves to be the Administrator/Chairman of the Board. That the Regulation framed by them is a scheme of management by a Court under Section 92 of the Code of Civil Procedure, 1908 is also not forthcoming.

46. The petitioner(s) to repel the assailment of their locus have brought on record a copy of the Constitution/ Regulation said to have been framed in the year 1970 in a general meeting of the "Bordeuris" of the temple along with an affidavit to that effect affirmed by three members of the "Bordeuri" family. An application dated 22.4.98 whereby the said Constitution had been laid in the Court of the District Judge, Kamrup, Guwahati has also been appended. This was followed by a prayer made by the "Bordeuri Samaj" seeking election to the Managing Committee which was resisted by 6 "Dolois" and others. In their petition seeking election, the "Bordeuri Samaj" averred that the prescribed term of five years of the then Managing Committee headed by Jnanada Prasad Sarma and Paran Ch. Sarma, "Dolois" which had been constituted in the year 1992 having expired, fresh elections were called for. Refuting this stand, the then Managing Committee denied the existence of any scheme for holding elections or any fixed term of its office.

47. The learned District Judge, Kamrup, Guwahati by his order dated 21.10.98 taking note of Section 25A of the Act directed that a Managing Committee be formed thereunder by the Deputy Commissioner, Kamrup, Guwahati by dissolving the then existing Committee or to form an adhoc Committee from and amongst the Bordeuri Samaj till regular election was held after the disposal of the Public Interest Litigation i.e. Civil Rule (PIT.) No. 35/97 then pending before this Court. The learned Court below in passing this order dealt with the constitution of the

Kamakhya Temple brought on record as above. It observed with reference, amongst others, to the decree passed by the learned Second Addl. Judge, Assam Valley Districts on 2.1.1935 in Spl. SubJudge Title Suit No. 28/1932 that the persons who are entitled to vote for the election of the "Bordeuris" and "Dolois" were defined and that the "Shebais" were not endowed with any form of voting to the Managing Committee of the Kamakhya Temple. That in this premise, the prayer of the "Shebais" to include their names as voters to the Managing Committee had already been rejected on 12.6.98 was noted. The Constitution projecting the "Shebais" as voters was, thus, rejected to be an invalid document. It was further recorded that the then existing Managing Committee had been elected in the year 1992 but that there was no mention about the term of its office. It, therefore, issued the operative directions as above being of the view that the said Body could not be allowed to continue in office for an indefinite period.

48. By then Civil Rule No. 3118/94 addressing a challenge to the vires of Section 25A of the Act was subjudice before this Court. During the pendency thereof, this order dated 21.10.98 was impugned in Civil RuleNo. 6221/98. Both these proceedings were analogously heard and decided on 2.5.2000 and the vires of Section 25 A was upheld and both the writ petitions were dismissed. The order dated 21.10.98 was thus left uninterfered. The rejection of the Constitution of the "Bordeuri Samaj" as above, thus, attained finality.

49. There is nothing on record to even indicate that the validity of the Regulation and/ or the legal status of the Board had ever been acknowledged in law to confer on the latter the necessary locus to pursue any legal remedy in any forum. There is no semblance of any emblem or stamp of validation of the Regulation or the Board to permit a representation as sought to be endeavoured by the petitioners in the face of the age old custom/ practice unassailably rooted in the annals of the institution. The respondents' plea that the deity is unconcerned with the property of the institution or that it is not in possession thereof has remained undemolished. Even assuming that the endowments made were in contemplation of obeisances to the deity, it can by no means, in view of the above determination, be represented by the petitioners in the capacity of the Administrator/ Chairman of the Board which is nonest in law. In the face of the concatenation of these revelations, we are of the unhesitant opinion that the petitioners lack in locus standi to maintain the present proceedings.

50. The learned Single Judge noticeably also did not decree this issue in favour of the petitioners. The fact that there was no attempt made either by the Deputy Commissioner to derecognise the Board or by the private respondents to challenge its authority and claim a right to manage the affairs of the institution before a competent Court of law, in our estimate, is not of any determinative significance. The submission made that the petitioners had approached this Court in their capacity as "Shebais" of the Temple also cannot be entertained for reasons cited hereinabove. The petitioners have failed to discharge their burden

of establishing their locus and, thus, in view of the scheme of the Act and other attendant materials on record, the plea of the respondents in this regard has to be sustained.

51. This adjudicative enterprise though could have been abandoned as a corollary of the above finding, having regard to the weighty legal issues, assiduity of respective convictions with regard thereto, the procrastinated imbroglio concerning a religious institution of public nature and the sentimental overtones that visibly informed the contentious exchanges, we feel impelled, being inspired by a public cause to assay the other aspects of the debate as well. This, we hasten to add, is without any prejudice to the above conclusion qua the locus standi of the petitioners.

52. The vires of the Act as a whole has been impeached to be transgressive of the constitutional paradigm of agrarian reforms. Section 25 A inserted in the Act by Act XIX of 1987 is also under assailment on additional counts. This newly incorporated provision as referred to hereinabove had been the subject matter of challenge in *Satradhikar, Bengana Ati Satra & Anr.* (supra) and a Division Bench of this Court vide its judgment and order dated 2.5.2000 had negated the same.

53. The writ petition was instituted on behalf of the *Satradhikar of Bengana Ati Satra, Majuli, Jorhat* on the plea of infringement of rights vested in the petitioner under Article 25, 26 and 300A of the Constitution of India. It was urged that the impugned provision hurt the religious sentiments of the "Bhaktas" of different Satras and offended their freedom to exercise their religious rites and curtailed the right to manage the property of the Satras. That the Satra/petitioner was allowed compensation in the shape of annuity of Rs. 3,27,759/ per annum with effect from the date of acquisition of the land was, however, admitted. The constitution of the Managing Committee as envisaged under Section 25A of the Act was assailed to be repugnant to the Satra system besides having the potential of affecting the religious functions performed at the Satras. That the mandate of this provision was beyond the purview of the objects and reasons of the principal enactment was also highlighted. A possibility of the Committee compromising with the expenditure otherwise essential for performing the religious functions was underlined. It was pleaded as well that on many occasions the Deputy Commissioner or the SubDivisional Officer contemplated by Section 25A visavis the Committee referred to therein might be a person belonging to a different community and thus the probability of mismanagement of the affairs of the religious institution was writ large.

54. This Court on an exhaustive survey of Article 25 and 26 of the Constitution of India as well as various authoritative pronouncements of the Apex Court on the issue held that though the constitutional provisions ensure right to freedom of religion and guarantee, the right to manage the own affairs in the matter of religion, activities of religious denomination other than related to purely essential and integral parts of religious activities could be regulated by law. That the properties of a religious denomination could be managed in accordance with law

as envisioned in Clause (d) of Article 26 of the Constitution of India was underscored.

55. It was concluded that none of the activities as assigned to the Committee under Section 25 A pertained to the performance of religious activities of the Satra and that the underlying objective was to remove the intermediaries who enjoyed much benefits as individuals as against the interest of the institution. This Court, thus, observed that any law enacted to have a control on the financial management of the institution would only serve a public purpose as against individual interests of those who might be at the helm of affairs thereof. It was further mentioned that whether a particular provision affects or touches any particular religious activity being an essential and integral part of religion or not would always be a question of fact.

56. Referring to the prescribed composition of the Committee, it was held that the apprehension of mismanagement or concession with the essential religious functions was too remote to render Section 25 A invalid and unconstitutional being violative of Articles 25 and 26 of the Constitution of India. While proclaiming the activities referred to in Section 25A to be secular, this Court ruled out that the Committee headed by the Deputy Commissioner or the SubDivisional Officer or his nominee, in view of the other constituents thereof could not be construed to be an outside authority. That the provision would be still workable in view of the composition of the Committee even if the Deputy Commissioner or the Sub Divisional Officer may belong to some other community was also emphasized. Besides holding with reference to the decision of the Apex Court in *A.S.Narayana Deekshitulu Vs. State of A.P. & Ors.*, 1996 (9) 5CC545 that hereditary rights of worship of any kind can be brought to an end by a legislation, this Court propounded that the rights of the petitioner with regard to the discharge of duties in running the Satra in so far those related to utilization of annuity and verification of maintenance of the Satra would be subject to the provisions of Section 25 A of the Act. The submission to the effect that though the principal Act in view of the assent thereto by the President of India and the inclusion thereof in Schedule 9 to the Constitution of India was protected under Article 31B, the Amending Act XIX of 1987 did not enjoy such a protective insulation was upheld. It was held that if a provision is amended or added in the statute after the same was brought in the aforementioned Schedule it could not avail the protection of Article 31B unless such subsequent amendment was integrated in the said Schedule. The plea that the Amending Act to be valid also ought to be assented to by the President of India was rejected. This Court, however, observed that the challenge in the proceedings did not extend to the competence of the State legislature to legislate on the subject concerned or that the amended provision was inconsistent with or repugnant to any existing provision of the principal Act. The challenge to the constitutionality of Section 25A in the above premise was rejected.

57. Whereas the Act including Section 25A has been repudiated on various

grounds herein as would be dilated upon hereinafter, a plea of resjudicata has been raised on behalf of the respondents in the face of the decision aforementioned. That successive challenges on fresh grounds in the background of the determination made therein are not permissible in law has thus been strenuously urged. The petitioners have sought to repulse this preliminary remonstrance on the ground that as the parties and the issues raised are distinctly different from those in Satradhikar, Bengana Ati Satra (supra), this plea is palpably misplaced.

58. The Privy Council in Radha Binode Mandal Vs. Sri Sri GopalJiu Thakur, AIR 1927 Privy Council 128, was seized with an almost identical fact situation. A suit being 155 of 1919 was instituted by Sri Sri God Gopal Jiu Thakur and Sri Sri God Shambuth Nath Shib Thakur represented by the shebait Narendra Nath Mandal wherein one Radha Binode Mandal was the first defendant along with 19 others. The plaintiffs sought a decree for declaration that the properties in the suit were owned and possessed by the Thakurs as "debutter" properties. The contesting defendants challenged the status of the properties to be debutter as claimed. The suit was dismissed, amongst others, on the ground that it was barred by res judicata and that the plaintiffs had not succeeded in establishing absolute endowment. This decision was reversed by the jurisdictional High Court.

59. In a subsequent suit filed i.e. T.S. 214 of 1919 by Radha Binode Mandal (principal contesting defendant in T.S. 155/1919) a decree for declaration that the plaintiff had a share in the properties mentioned in the schedule was sought for along with a preliminary decree for partition. The preliminary decree was passed. In the appeal that followed, this decree was reversed. Before the Privy Council, the plea of res judicata was reiterated with reference to a decision in T.S. 206/1915 instituted by Gopal Lal Mandal and Ram Lal Mandal as Sri Sri Iswar Gopal Jiu thakur's shebait. Gopal Lal Mandal and Ram Lal Mandal incidentally were defendants in T.S. 155 of 1919. In T.S. 206 of 1915 the defendants were also described as Sri Sri Iswar Gopal Jiu Thakur's Shebait. Radha Binode Mandal, contesting defendant in T.S. 155 of 1919 and arrayed as defendant No. 10 in T.S. 206 of 1915 denied that the properties were debutter. T.S. 206 of 1915 was dismissed, amongst others, on the ground that it had not been framed properly and that the plaintiffs therein have failed to establish an absolute endowment. In this factual scenario the issue of res judicata came to be scrutinized. Their Lordships of the Privy Council decided against this plea on the ground that the parties in the two suits were different and that, thus, Section 11 of the Code of Civil Procedure, 1908 was not attracted.

60. We, considering the overall fact situation, as well as the essentiality of an adjudication on merits visavis the legal aspects portrayed as indicated hereinabove, are not inclined, in the face of the above judicial view, to nonsuit the petitioners on this ground. The plea of res judicata, thus, fails.

61. Another incidental facet if attended to at this stage would finally clear the deck to focus on the legal issues of moment. The respondents in their bid to

sustain the Act have not only adverted to the assumption of constitutionality of a legislation but also while alluding to the avowed objective of promoting agrarian reforms as a measure of amelioration of the pitiable state of the landless to actualize the constitutional promise of socioeconomic development, have wielded the shield of legislative prerogative and supremacy of the parliament. The petitioners have in controversial of this plea relied upon authorities dwelling on the power, privilege, immunity etc. of the Indian Legislatures which deserve reference at this juncture. The enunciation in this regard by the Constitution Bench of the Supreme Court in U. P. Assembly case (Special Reference No. 1 of 1964) reported in AIR 1965 SC 745 on the theme of parliamentary democracy in India would be apt.

62. While marking a distinction with the parliamentary sovereignty in England where no person or body is recognized by law as having a right to override or set aside the legislation made by it, their lordships dwelt upon the essential characteristic of federalism as "distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other". It was propounded that the supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing the delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. Their

Lordships enounced that this supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers. That the aforementioned dominant trait of the British Constitution cannot be claimed by our federal constitution was accented upon. The following extracts from this decision are of definitive bearing:

"Besides, the legislative supremacy of our legislatures including Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens justified by the relevant articles dealing with the said fundamental rights, their legislative, actions are liable to be struck down by courts in India. Therefore, it is necessary to remember that though our legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution."

"In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the legislatures and the judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the executive which is another important constituent of a democratic State must Junction not in antinomy nor in a spirit of hostility but rational I and in a spirit of understanding within there spective

spheres. For such harmonious, working of the three constituents of the democratic State alone will help the peaceful development. growth and stabilization of the democratic way of life in this country.

63. While recalling the above resounding principles defining the salient attributes of parliamentary democracy in India, the Apex Court in *Raja Ram Pal Vs. Hon"ble Speaker, Lok Sabha*, (2007) 3 SCC 184, proclaimed that the legislatures undoubtedly have plenary powers but such powers are controlled by the basic concepts of the written constitution and can be exercised within the legislative fields allotted to their respective jurisdiction under the Seventh Schedule. It was held that though the legislatures have the plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them, the basis of such power is the Constitution itself.

64. In the teeth of the unequivocal and momentous expositions as above, the plea of parliamentary supremacy qua a challenge to the constitutionality of an enactment is untenable and ought not to detain us from venturing into the next phase of the adjudication.

65. The denunciation of the constitutional validity of the Act, as amended, eventually needs judicial scrutiny The enactment patently is one by the State legislature claimed to be on the theme contained in Entry 18 of List II to Schedule 7 of the Constitution of India. No asserted contingency of its repugnance with any central Act on a common entry obtains in the instant case. This is in the context of Entry 42 in the concurrent list.

66. At the very threshold, in view of the earlier challenges to the Act, the contour of the present assailment has been confined to lack of legislative competence and infringement of the constitutional scheme of agrarian reforms. This is understandably as well in view of the enlistment of the parent Act under Schedule 9 to the Constitution of India earning for itself the amulet of insulation against impugnement thereof as envisaged in Article 31A and 31B. Visavis Section 25A of the Act incorporated vide Amendment Act XIX of 1987 ratified with the assent of the Governor of Assam, the same has been impeached as well of being extraneous to and unrelated with the purported objective of the principal legislation as professed.

67. It has been repudiated additionally to be irreconcilably vague with the portentous potential of being abused by the possible arbitrary exercise of unbridled and plenary discretion selectively conferred thereby on chosen authorities.

67A. The constitutionality of the Act as a whole has been endorsed by the respondents hailing it to be one for promoting land reforms encompassing the concept of agrarian reforms as a measure of socioeconomic development of the landless poor.

68. The statement of objects and reasons of the Act as originally framed hints at

the essentiality thereof to acquire lands of religious and charitable institutions of public nature hitherto excluded from the purview of the Assam Fixation of Ceiling on Land Holdings Act, 1956 to facilitate a better status to the actual occupants thereof and to assure them fixity of tenure and to settle the unoccupied lands with the landless people. The title of the enactment as well as the preamble is in consonance with the statement of objects and reasons as it is conspicuously one to provide for acquisition by the State of lands belonging to religious and charitable institutions of public nature. Though the Bill of the State legislature had received the assent of the President of India on 2nd April, 1961 and published in the issue dated 12th April, 1961 of the Assam Gazette, Extraordinary, the Act was brought into force with effect from 18.1.1963 by a notification of the State Government dated 15.1.1963 and published in the Assam Gazette on 16.1.1963. Though submitted at the Bar otherwise, Rules under the Act had been framed,

69. Section 2 of the Act deals with the definition of various expressions of which those relevant have been set out hereinabove. Section 3 empowers the State Government to declare by notification in the official Gazette that all rights in the land belonging to a Religious or Charitable Institution of Public Nature shall vest in the State free from all encumbrances, with effect from the first day of the agricultural year next following the date of publication of such notification. A copy of the said notification, as Section 3(2) mandates, is to be served on the Head of the religious or charitable institution in the manner prescribed. The publication of the notification in the official Gazette is to be construed to be a conclusive evidence of due publication thereof and of notice to all persons affected thereby. With the publication of such a notification all rights, title and interest in the lands of a religious or charitable institution with the subsoil etc. as detailed in Section 4 would cease and the same would vest absolutely in the State free from all encumbrances with effect from the date to be specified therein.

70. A religious or charitable institution under Section 5 is entitled to retain possession of the categories of lands as enumerated therein. Notwithstanding such a notification, the proviso to Section 5 clarifies that the right of ownership or possession of lands as specified in Clause (i) thereof shall not, however, be transferable or alienable. Section 6 empowers the Deputy Commissioner to take possession of the lands so vested in the State excluding those along with the buildings thereon elected to be retained by the religious or charitable institution under Section 5 of the Act. Provision for compensation to the religious or charitable institution whose lands have been acquired has been made in Section 7 and the principles for determination thereof have been set out in Section 8. Subsection (5) of Section 8 prescribes that the net income that is worked out would be paid in cash annually as perpetual annuity as compensation to the Head of the institution for the lands acquired. An interim compensation pending investigation and final determination thereof has been provided for by Section 9. Section 11 provides that every religious or charitable institution whose rights in land have been acquired by the State Government would prefer claim for

compensation before the jurisdictional Deputy Commissioner within 30 days from the date of acquisition of such rights. Section 15 and 16 deal exhaustively with the procedure of settlement of the acquired land with persons in occupation thereof and otherwise. Whereas in case of an occupant who had on the relevant date acquired the status of a occupancy tenant under the Assam (Temporarily Settled Areas) Tenancy Act, 1971, the lands in his holding shall be settled with him with the status of a land holder as defined in the Assam Land and Revenue Regulation, 1886, in the event he has not acquired the said status, the land in his occupation shall be settled with him with the status of a settlementholder under the aforesaid Regulation. The order of preference in the matter of settlement of unoccupied land has been stipulated by Section 16 which in no uncertain terms spell out the conditions of eligibility to identify the persons deserving the settlement contemplated. Noticeably, amongst the persons so categorized, a cooperative farming society formed by landless actual cultivators and Agricultural Farming Corporation as defined in the Assam Agricultural Farming Corporation Act, 1973 have been included. Bodies/ institutions apart from individuals have, thus, been contemplated as well for the settlement of the land so acquired. Section 18, 19 and 20 have been devoted to the process of identification of land by the religious or charitable institution for retention under Section 5; verification of information furnished; hearing of objections, if any, and publication of the final statement thereof.

71. A conjoint reading of Sections 3, 4, 5, 18, 19 and 20 of the Act demonstrates that the investiture of the rights in the lands belonging to a religious or charitable institution of public nature in the State would be subject to retention of the lands as specified by such institution to the extent as envisaged in Section 5 of the Act. Thereunder a religious or charitable institution is entitled to retain possession (i) free of revenue of all such lands which on or before the last day of Chaitra, 1365 B.S. were in the ownership of the institution and were actually occupied by it by constructing buildings and raising orchards and flower gardens together with the compounds appurtenant thereto and all lands reserved for the resident devotees for residential purposes; (ii) tea garden land. Whereas the land in the first category can be held free of revenue, the right of ownership or possession therein, as the proviso stipulates would not be transferable or alienable. The tea garden lands, however, would be liable for assessment to full revenue under the existing law,

72. Having regard to the scheme of the Act as a whole, as recited hereinabove, we do not feel persuaded to hold that the enactment proclaims total extinction of the rights in the land(s) of a religious or charitable institution of public nature and, that too, without providing for any compensation therefor. True it is that unlike the Assam Fixation of Ceiling on Land Holdings Act, 1956, the besieged enactment does not provide for any ceiling beyond which the land of a religious or charitable institution can be compulsorily acquired but with option provided to it to retain those as enumerated in Section 5, such an omission, if any, is not per se annihilative of the professed purpose thereof to further agrarian reforms.

73. A conscious reading of the provisions of the Act evidences that it is for a public purpose. The lands are sought to be acquired from a religious or charitable institution to distribute the same to persons in occupation thereof as a tenant and otherwise to those who are in need of the same, Compensation by way of permanent annuity on the basis of the net income of such an institution has been conceived of. The legislation makes it incumbent on the State, after the lands are acquired to distribute the same in the manner prescribed thereby. The model of the Act does not project itself to be a legislation endeavoured to make profit out of the lands acquired from a religious or charitable institution of public nature directly or indirectly. The pleas to the contrary based on complete effacement of the rights of a religious or charitable institution in its lands and absence of a provision for ceiling as anathema to the constitutional ethos of agrarian reforms, thus, do not appeal to us. The impugned enactment on the face of it establishes it to be one to effectuate land reforms and other incidental and auxiliary purposes in parimateria therewith.

74. It has been persistently emphasized by the respondents that the impugned enactment is well within the domain of Entry 18 of List II of Schedule 7 to the Constitution of India. As the Act involves an element of acquisition of land, Entry 42 of List III also prima facie appears to be relevant. These two legislative entries for ready reference are extracted hereinbelow:

"Entry 18 List II

Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

Entry 42 List III

Acquisition and requisitioning of property."

75. Apart from the fact that a State legislature is constitutionally empowered under Article 246 to make laws for the corresponding State or any part thereof with respect to any of the matters enumerated in List II subject to the rider contained in sub Article 2 thereof, such power is available with respect to any of the matters enumerated in List III as well. Article 254 which deals with inconsistency between the laws made by the parliament and the legislatures of the States ordains that where a law made by the Legislature of a State with respect of one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. Though the parties are as such not at issue in this regard and the plea of repugnance of the impugned legislation with any central Act has not surfaced in course of the arguments, the parent Act (shorn of its amendment in 1987) having received the assent of the President enjoys the privilege of Article 254(2) as alluded

hereinabove. To reiterate, the parent Act having been included in Schedule 9 to the Constitution, it is equipped as well with the protective cloak of Article 31A and 31B. Thus, the availability of the aforementioned two legislative entries to the State Legislature qua the impugned enactment is an indubitable conclusion.

76. A brief allusion to a few constitutional provisions at this stage would not be out of context. Though Article 13(2) prohibits a State to make a law which takes away or abridges the right conferred by Part III of the Constitution with the edict that any law made in contravention of this prescript would be void, Article 31A saves the laws providing for acquisition of estates etc. as catalogued in subArticle(1) thereof. The classes of law thus protected include the one for acquisition by the State of any estate or of any right therein or the extinguishment or modification of any such right Article 31 A, as initially designed, extended the protection to the laws so catalogued against any challenge to be void on the ground that those were inconsistent with or effected denudation or abridgement of rights conferred by Article, 14, 19 or 31 of the Constitution of India. Following the Constitution (Fortyfourth Amendment) Act, 1978, Article 31 was deleted from the ambit of such protection. Laws as on date, thus, are shielded from assailment on the ground of inconsistency with or deprivation/ abridgement of any rights conferred by Article 14 and 19 of the Constitution of India.

77. The first proviso further mandates that where such a law is made by the Legislature of a State, the protective cover of the Article would not be available unless such a law having been reserved for the consideration of the President, has received his assent. Whereas the second proviso makes payment of compensation obligatory in the eventualities as mentioned therein, subArticle(2) of Article 31A defines the expression "estate" and "rights" which deservingly are quoted hereinbelow:

" (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include

(1) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites buildings and other structures occupied by cultivators of land, agricultural labourers and villages artisans.

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, subproprietor, underproprietor, tenureholder or other intermediary and any rights or privileges in respect of land revenue."

78. As would be apparent from the definitions so provided, the expression

"estate" would also include any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and villages artisans.

79. Article 31B which was introduced by the Constitution (First Amendment) Act, 1951, validates certain Acts and Regulations specified in the Ninth Schedule and secures against the voidness thereof or any provision therein on the ground that those are inconsistent with or takes away or abridges any of the rights conferred by any provision of PartIII and enjoins that notwithstanding any judgment, decree or order of any court or tribunal to the contrary and would be subject to the power of any competent Legislature to repeal or amend the same shall continue to be in force. The opening lines of this Article clarify that the protection provided by it is without prejudice to the generality of the provisions contained in Article 31 A. Thus, in terms of this constitutional provision though Acts/ Regulations protected thereby are open to repeal or amendment by the competent Legislature, those would otherwise continue to be in force and are secured against any challenge of being void on the ground of inconsistency with or abridgement of any right conferred by PartIII of the Constitution. No judgment, decree or order of any court or tribunal to the contrary, as this Articles mandates, would impede the continuance of such Acts/ Regulations.

80. Article 39 acknowledged to be a living force in the galaxy of directive principles treasured in the Constitution ordains that a State in particular shall direct its policy towards securing inter alia that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. It is trite that having regard to this constitutional commitment, even a State policy fructifying in any legislation on a cognate theme has to essentially comport to the ideals so zealously preserved in the aforementioned hallowed provision of the National Charter. The impugned enactment as professed if lodged within the precincts of the above clauses of Article 39 of the Constitution of India, the impeachment thereof on the ground of its incompatibility with the constitutional philosophy of agrarian reforms has to be dismissed as untenable.

81. In this setting, we segue to the authorities cited at the Bar. A Constitution Bench of the Apex Court in Sajjan Singh (supra) while tracing the history of the assimilation of Article 31A and 31B in the Constitution of India, underlined that such a supplementation by the Constitution (First Amendment) Act, 1951 was necessary in view of the realization that the legislative measures adopted by certain States for giving effect to the policy of agrarian reforms had to face a serious challenge in Courts of law on the ground that those contravened the fundamental rights guaranteed to the citizens by PartIII. Conflicting judicial decisions followed impelling the Parliament to introduce the relevant amendments for adding the above two provisions. Their Lordships observed that

it was a first step taken by the Parliament to assist the process of legislation to bring about agrarian reforms followed by the Constitution (Fourth Amendment) Act, 1955 by amending Article 31A to widen the scope of such reforms and to confer on the legislative measures adopted in that behalf immunity from a possible attack that they contravened the fundamental rights. The Apex Court observed that the amendments were to assist the State Legislatures of the country to give effect to the economic policy in which the party in power passionately believed to bring about the much needed agrarian reforms. Their Lordships concluded that on the application of the pith and substance test to the amendments it would be apparent that the Parliament had sought to amend the fundamental rights solely with the object of removing any possible obstacle in the fulfillment of the socioeconomic policy in which the party in power believed.

82. A Constitution Bench of the Apex Court in *Waman Rao & Ors.* (supra) while responding to a challenge to the constitutionality of Article 31A and 31B as well as unamended Article 31C of the Constitution along with the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (27 of 1961) noted, amongst others, the Statement of Objects and Reasons of the amendment to Article 31A with retrospective effect vide the Constitution (Fourth Amendment) Act, 1955 as extracted hereinbelow:

" 19. Article 31 A was further amended with retrospective effect by the Constitution (Fourth Amendment) Act, 1955, the object of which was explained as follows in the Statement of Objects and Reasons of that Amendment: it will be recalled that the Zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to Articles 14, 19 and 31 and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenges in the courts, Articles 31 A and 31 B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act, Subsequent judicial decisions interpreting Articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following:

(i) While the abolition of Zamindari and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are the fixing of limits to the extent of agricultural land that maybe owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

(ii).....

(iii).....

(iv).....

It is accordingly proposed in Clause 3 of the Bill to extend the scope of Article 31

A so as to cover these categories of essential welfare legislation."

83. The speeches made in the Provisional Parliament by Pandit Jawaharlal Nehru while moving the Bill referred to the related report of the Select Committee, the relevant excerpts where of having a bearing on the issue involved are quoted hereinbelow:

"The real difficulty which has come up before us is this. The Constitution lays down certain directive Principles of State Policy and after long discussion we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive

Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static, to preserve certain rights which exist. Both again are right. But somehow and sometime it might so happen that that dynamic movement and that static standstill do not quite fit into each other.

Therefore, we have to think in terms of these big changes, and changes and the like and therefore we thought of amending Article 31. Ultimately we thought it best to propose additional Articles 31A and 31B and in addition to that there is a Schedule attached of a number of Acts passed by State Legislatures, some of which have been challenged or might be challenged and we thought it best to save them from long delays and these difficulties, so that this process of change which has been initiated by the State should go ahead,.....Now the whole object of these Articles in the Constitution was to take away and I say so deliberately to take away the question of Zamindari and land reform from the purview of the courts. That is the whole object of the Constitution and we put in some proviso etc. in regard to Article 31. What are we to do about it? What is the government to do? If a government has not even the power to legislate to bring about gradually that equality, the government fails to do what it has been commanded to do by this Constitution. That is why I said that the amendments I have placed before the House are meant to give effect to this Constitution. I am not changing the Constitution by an iota; I am merely making it stronger. I am merely giving effect to the real intentions of the framers of the Constitution, and to the wording of the Constitution unless its interpreted in a very narrow and legalistic way. Here is a definite intention in the Constitution."

84. Apropos the above excerpts, their Lordships responded commenting that those were in order to resolve doubts and difficulties and not with the intention of creating confrontation with any other arm of the Government or with the people and were to portray as to how the Constitution was failing of its purpose and how essential it was, in order to remove glaring disparities, to pour meaning and content into the framework of the Constitution for the purpose of strengthening its structure.

85. Their Lordships with reference to Article 39(b) and (c) recalled the

constitutional enjoinder for distribution of ownership and control of the materials resources of the community so as to best subserve the common good and also to secure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The Apex Court concluded that the first and the fourth amendments to the Constitution were in order to effectuate the purpose of these Directive Principles. The extract from the Report of the Committee of the Panel on Land Reforms (Government of India, Planning Commission, 1959) embodying the policy of imposition of ceiling on agricultural lands and the objectives thereof were also taken note of. This needs extraction as well.

"As stated in the Report of the Committee of the Panel on Land Reforms (Government of India, Planning Commission, 1959). the policy of imposition of ceiling on agricultural lands fulfils the following, objectives:

- (i) meeting the widespread desire to possess land:
- (ii) reducing glaring inequalities in ownership and use of land:
- (iii) reducing inequalities in agricultural incomes: and
- (iv) enlarging the sphere of selfemployment.

The Report of the Working Group on Land Reforms, 1978 (Ministry of Agriculture and Irrigation, Department of Agriculture) says that it was widely recognized that the imposition of ceiling on agricultural holdings and tenancy reforms constituted the substance of the agrarian reform movement and that concentration of land in the hands of a small group inhibits production, encourage concealed or irregular tenancies and, results in unequal accesses to facilities of production in the rural sector."

86. Their Lordships were of the view that in any economy with a preponderant agricultural sector, the overall growth of economy is largely determined by growth in agricultural production and elimination of constraints on production ought to be a major national priority. It was observed that agrarian reforms, therefore, inter alia require reduction of the larger holdings and distribution of the excess land according to social and economic considerations. While upholding the constitutional validity of Article 31 A, their Lordships observed that in the constitutional era embarked upon, a direct and immediate nexus between the preamble promises and the amendments was discernible. It was underlined that if there is one place in an agriculturedominated society where citizens can hope to have equal justice, it is on the strip of land which they till and love, the land which assures to them the dignity of their person by providing to them a near decent means of livelihood.

87. The Apex Court in the Godavari Sugar Mills Ltd. (supra) while dealing with an assailement of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, as amended, on the anvil of Article 31A and 31B of the Constitution of India, recalled its determination in Ranjit Singh & Ors. Vs. State of Punjab & Ors.,

79657/SCR 82 to the effect that the scheme of rural development envisages not only equitable distribution of land so that there is no undue imbalance in the society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but also contemplates the raising of economic standards thus promoting rural health and social conditions, it was further reminiscence that assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. ensured for the benefit of the rural population must be considered to be an essential part of the process of redistribution of holdings and open lands. Their Lordships were of the view that if agrarian reforms are to succeed, mere distribution of land to the landless is not enough and there ought to be a proper planning of rural economy.

88. The reach and amplitude of Entry 18 of List II of Schedule 7 to the Constitution, amongst others, came to be analysed by the Apex Court in *Jagannath* (supra) in the context of an assailment of the validity of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961. Their Lordships elicited that the said entry like any other entry in the three Lists only provides the outline of the subject matter of legislation and, therefore, the words in the entry are to be construed in their widest amplitude and as a corollary, the field of legislation covered by the entry ought not to be narrowed down in any way unless there is anything in the entry itself which defines the limits thereof. It was observed that Entry 18 was meant to confer the widest powers on the State Legislature with regard to rights in or over land and such rights are not to be measured by or limited to the rights as between landlords and tenants or the collection of rents. Their Lordships propounded that if the State Government seeks to enforce a measure by which the condition of barren or unproductive lands can be improved, it can do so even if the same curtails the rights of landlords and tenants over them. That such a step in order to give effect to the directive principles enshrined in Article 39(b) and (c) of the Constitution would not be outside the scope of Entry 18 of List II read with Entry 42 of List III was underlined. It was held that such a measure can aptly be described as a one of agrarian reform or land improvement and that the persons who have only small holdings and work on the lands themselves would be more likely to put in greater efforts to make the land productive than those who held large blocks of land and are only interested in getting a return without much effort. It was concluded that acquisition of land though not directly covered by Entry 18, but, read with Entry 42 in List III the State has the competence to acquire surplus land so as to give effect to the policy under Article 39 of the Constitution.

89. While dwelling on the same Entry, the Apex Court in *Accountant & Secretarial Services Pvt. Ltd.* (supra) enunciated that the same deals with four main topics—land, transfer and alienation of agricultural land, land improvement and agricultural loans and colonization. Their Lordships were of the view that the second and the third in the sequence pertained to agricultural land. While indicating that colonization signifies conversion into building and industrial sites

of agricultural land, it was emphasized that to gauge the amplitude of Entry 18 the notion of land ought not to be constricted to include rural or urban, agricultural or nonagricultural, arid, cultivated, fallow or vacant lands.

90. Adverting to the definition of "land" as provided in the Black's Law Dictionary as well as in the Law lexicon in the perspective of Entry 18, the Apex Court in *Jilubhai Nanbhai Khachar* (supra) enounced that it was not restricted to agricultural land alone but held in its sweep nonagricultural counterparts as well. The words "rights in" or "over land" applied in Entry 18 were held to confer very wide power not limited by rights between the landlords inter se or the land holder or the State or the landholder and the tenant and that resumption of the estate was one of the contemplated objectives thereunder.

91. Tracing the concept of distributive justice to legislations contemplated under Entry 18, their Lordships in *Lingappa Pochanna Appelwar* (supra) underlined that law ought to be used as a tool there for to achieve a fair division of wealth among the members of the society, thus, lessening inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban or by direct regulation of contractual transaction by forbidding certain transactions and, perhaps, by requiring others. That all such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of the society was also hinted at.

92. Dilating on the same theme, the Apex Court in *State of WB, Vs. Ashish Kumar Roy & Ors*, (supra), recalled the observations in its earlier rendering in *State of Kerala Vs. Gwalior Rayon Silk Mfg, (Wvg.) Co. Ltd*, (1973) 2 SCC 713 that the concept of agrarian reform is a complex and dynamic one intending to realize the social function of the land and includes creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, construction of irrigation systems and adequate drainage, making available fertilizers, fungicides, herbicides and other methods of intensifying and increasing agricultural production, providing readily available means of communication and transportation to facilitate proper marketing of the village produce, putting up of silos, warehouses etc. to the extent necessary for preserving produce and handling it so as to bring it conveniently within the reach of the consumers when they need it, training of village youth in modern agricultural practices with a view to maximizing production and help solve social problems that are found in relation to the life of the agricultural community. This decision, therefore, by way of illustration projected a comprehensive spectrum of the concept of agrarian reforms constitutionally envisioned to be furthered by legislation under Entry 18 of List II.

93. The above mentation really was in echo of the observations made by a Constitution Bench of the Apex Court in *Ranjit Vs. State etc.*, AIR 1965 SC 632 to the effect that equitable distribution of lands, annihilation of monopoly of ownership by imposition of ceiling and regeneration of the rural economy by

diverse planning and strategies are covered by the armour of Article 31 A. The following extract provides a deep insight into the view:

"The scheme of rural development today envisages not only equitable, distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to village panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc, with (sic) enure for the benefit of rural population must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of lands to the landless is not enough. There must be a proper planning, of rural economy and conditions and a body like the village panchayat is best designed to promote rural welfare than individual owners of small portions of lands. Further the village panchayat is an authority for purposes of Part III as was conceded before us and it has the protection of Article 31 A because of this character even if the taking over of Shamlat deh amounts to acquisition.....The setting of a body of agricultural artisans (such as village carpenter, the village blacksmith, the village tanner, furrier, wheelwright, barber, washerman etc.) is a part of rural planning and can be comprehended in a scheme of agrarian reforms. It is a trite saying that India lives in villages and a scheme to make villages selfsufficient cannot but be regarded as part of the larger reforms which consolidation of holdings, fixing of ceiling on lands, distribution of surplus lands and utilizing of vacant waste lands contemplate."

This view was reinforced by a latter pronouncement of a Constitution Bench of the Apex Court in *State of Kerala vs Gwalior Rayon Silk (Wvg.) Co. Ltd.* (supra).

94. In response to a challenge to the vires of the West Bengal Land Reforms Act, 1955 with the amendment thereto, the Apex Court in *Sasanka Sekhar Maity & Ors.* (supra) while proclaiming it to be a piece of social legislation for agrarian reforms, acknowledged it to be one to reconcile the fundamental rights of a community as a whole with the individual rights of the more fortunate section of the community. In doing so, their Lordships culled out the broad objectives of a legislation relating to agrarian reforms to be (i) to maximize the agricultural output and productivity, (ii) fair and equitable distribution of agricultural income, (iii) increase in employment opportunities, and (iv) social or ethical order and underscored that these objectives can be achieved through a progressive legislation.

95. The Apex Court in *Union Territory of Goa, Daman and Diu & Anr.* (supra) while observing that appropriately enacted statutes having provisions for fixing ceiling of holdings do fall in the category of legislation for agrarian reforms, negated the contention that such a provision was an essential feature of agrarian reforms without which a law could not be included in that category. Their

Lordships clarified that fixing ceiling area of land which can be held by a person is not necessarily a basic and essential requirement of land reform and that a proper statute even without including provisions regarding ceiling maybe entitled to the protection of Article 31A provided it is otherwise a measure of agrarian reform.

96. That agrarian reforms cannot take the same pattern throughout the country had been laid down in unequivocal terms by the Apex Court in *Kh. Fida Ali & Ors.* (supra). Elaborating on this conclusion, their Lordships observed that besides the availability of land for the purpose, limited in scope in the nature of things, the scheme has to fit in with the local conditions, variability of climate, rainfall, peculiarity of terrain, suitability and profitability of multiple crop patterns, vulnerability of floods and so many other factors in formulating a scheme of agrarian reforms suitable to a particular State. It was further observed that while a modest beginning can be with the land at disposal, modern methods of mechanization and other improvements can be resorted to with the help of the State machinery available to the tillers of the soil and that such details can be worked out gradually by various process in the course of implementation of the provisions of the enactment and the Rules framed thereunder.

97. The decision of the Apex Court in *Prof. Yashpal & Anr.* (supra) is clearly distinguishable on facts. There the State Government in purported exercise of its power under the statute involved set itself in a spree of establishing universities on the basis of proposals submitted by sponsoring bodies without being satisfied of the facilities or availability or otherwise of the indispensable requisites for such a centre of academic excellence as mandatorily prescribed by the enactment. No analogy can be drawn of the contextual facts to draw sustenance in support of the challenge to the validity of the Act recited herein.

98. The constitutionality of the Act had been unsuccessfully subjected to challenge also in *Jiban Chandra Sarma, Doloi* (supra) on the plea of it being a piece of colourable legislation and wanting in legislative competence of the State. On a dialectical scrutiny of the provisions of the Act, a Division Bench of this Court held that the object thereof was acquisition of land and that it could not be said that the same came either ostensibly or actually under any entry other than Entry 42 List III of the 7th Schedule. The plea that the legislation was confiscatory on the ground that it provides for adequate compensation in the form of permanent annuity was rejected. Their Lordships recorded that the legislation could not be condemned to be an instrument to make profit out of the land and that no part thereof signified delegation of any legislative function to the executive. While interpreting Section 25 their Lordships observed that the same only gave power to the Government to delegate its functions, but it did not imply delegation by the legislature of its legislative functions to the executive.

99. The word "agrarian" has been defined in *Black's Law Dictionary* (6th Edition), *Advanced Law Lexicon* by P. Ramanathan Aiyer, *Websters Dictionary* and *Oxford English Dictionary* as hereinbelow:

Black's Law Dictionary

Agrarian relating to land or to division or distribution of 1 and; as agrarian law

Advanced Law Lexicon

Agrarian relating to land or to a distribution or division of land (Burril) or agrarian law.

Websters Dictionary

Agrarian of or relating to and or landed property

Oxford English Dictionary

Agrarian pertaining to land

100. The definition of the word "agrarian", therefore, does not as such contemplate any particular class or category of land so much so to limit it to one of agricultural genre alone. This as a corollary not only widens the species of land but also the nature of use thereof, however, essentially relatable to reforms to ensure socioeconomic development of the landless. The perceived goals of agrarian reforms as acknowledged in the aforerecited judicial pronouncements and the life's experiences assuredly have to address the areas of health, education, selfdevelopment through employment so as to ensure enhancement of the quality of life of the havenots. Promotion of socioeconomic growth of the landless and deprived sections of the society so as to consolidate and secure their existence in the coeval order is the ultimate goal. The philosophy of this mission finds reflection, amongst others, in Article 39(b) and (c) of the Constitution of India. A close analysis of the provisions of the Act impugned herein and the facts attendant thereon does not permit a conclusion that the same is either uninformed with this avowed objective or is a sham enactment with a pretentious visage masquerading for its protection under the impregnable armour of Article 31A and 31B of the Constitution of India.

101. The preponderant judicial opinion on the various facets of the lis pertaining to impeachment of the Act adumbrated hereinabove persuades a deduction favouring the constitutional validity thereof. The impugned legislation can by no means be denounced as bereft of the legislative competence of the State Legislature in the face of the plentitude of Entry18 of ListII and Entry42 of ListIII of Schedule7 to the Constitution of India as well as the assent of the President thereto. The profound views delineated by the Apex Court as adumbrated by the decisions dealt with hereinabove also repel the plea of repugnance of the Act to the constitutional scheme of agrarian reforms. The model of the Act with special reference to Section15 and 16 thereof which engraft the procedure of distribution of lands acquired squarely brings it within the paradigm of land reforms. Agrarian reforms being subsumed in land reforms with more comprehensive frontiers, the avowal that the impugned enactment is wanting in the basic characteristics of a law of agrarian reforms does not commend for acceptance.

102. As determined hereinabove, the Act does not spell total eradication of the rights of the religious institution rendering it landless. Provision for adequate compensation by way of permanent annuity has been made as well. The impugned legislation, having regard to the salutary purpose thereof, is also in tune with the constitutional ideology contained in Article 39(b) and (c). In view of the progressive expositions of land reforms portrayed by the decisions referred to hereinabove, the respondents' plea that the same permissibly can be extended even to purpose relatable to industrialization of an area to cater to rural welfare deserves to be sustained. Not only the absence of a provision for ceiling of land is not extinctive of the status of an enactment for land reforms, if it is otherwise discernible to be so, the liberty provided by the impugned Act to the concerned religious or charitable institution to retain land of its choice renders the essentiality of such a provision (for ceiling) redundant. The impugned enactment, thus, is in consonance with the constitutional ethics of land reforms.

103. Though it had been submitted at the Bar that no Rules had been framed under the Act, the Assam State (Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature), Rules, 1962 framed in exercise of powers conferred by Section 30 of the Act had been published in the issue dated 9.1.1963 of the Assam Gazette, Part IIA. Rule 9 thereof requires that claim for compensation under Section 11 of the Act has to be in Form C, whereafter, the Deputy Commissioner concerned would dispose of the same after such verification as may be necessary and decide the perpetual annuity to be paid in cash under Section 8(5) of the Act. It is a matter of records that an amount of Rs. 80,550/- at the rate of Rs. 3500/- per year by way of ad interim compensation meanwhile has been paid. It has been the consistent stand of the respondents that perpetual annuity for the acquired area could not be fixed for the failure on the part of the Head of the institution to submit return in Form C as required under the Act and the Rules framed thereunder. This plea has not been successfully demolished either by the petitioner or the religious institution concerned. The plea of nonpayment of perpetual annuity, thus, cannot be entertained as a vitiating factor to repudiate the Act.

104. The assailment of Section 25 A in particular next demands scrutiny. Admittedly, this provision had been put to test earlier in *Satradhikar, Bengana Ati Satra* (supra) and the challenge was negated. The renewed polemic broadly centers around the perceived vitiating deficiencies thereof, namely, it is unconnected with the purported object of the principal Act, and is grossly vague and capable of being abused in view of the inbuilt conferment of uncontrolled discretion to a chosen few to facilitate the same.

105. In *Satradhikar, Bengana Ati Satra* (supra) the challenge to the vires of Section 25A was laid on the following grounds:

i) Rights under Articles 25, 26 and 300A of the Constitution of India are infringed thereby.

ii) The provision hurts the religious sentiments of the Bhaktas of different Satras and offends their freedom to exercise their religious rites and curtails the right to manage its property.

iii) The Satras being religious institutions performing religious functions, their right to perform such functions are protected and cannot be interfered with in any manner.

iv) The constitution of the Managing Committee as envisaged under Section 25A of the Act is repugnant to the Satra system and may also affect the religious functions which are performed by the Satras.

v) The provision introduced to exercise control over the matter of utilization of annuity and to verify the proper maintenance of the institution is not within the reasons and objects of the principal Act. vi) Once the amount of compensation is paid in the shape of annuity or otherwise, it would not be within the scope of the principal Act to further control the expenditure of the amount of compensation, vii) The Committee may take a decision substantially reducing the expenditure on any particular religious function, which may make it impossible to perform it in keeping with the traditions and practices existing in the Satras.

viii) On some occasions the Deputy Commissioner or the SubDivisional Officer may be a person belonging to a different community which may render it impossible for him to see the things in the correct and proper perspective, thus, creating a possibility of mismanagement of the affairs of the religious institution ultimately affecting the religious functions thereof. 106. A Division Bench of this Court noticing that the main thrust of the contentions had its radix in Article 25 and 26 of the Constitution of India, initiated the process of adjudication by referring thereto. These two constitutional provisions provide the foundation of the analysis to follow and, thus, being of considerable significance are quoted hereinbelow:

"25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

26. Freedom to manage religious affairs. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law."

107. After an indepth survey of a number of judicial decisions of the Apex Court bearing on the issues raised, the following conclusions were recorded :

i) Articles 25 and 26 of the Constitution ensure right to freedom of religion and guarantee the right to manage the own affairs in the matters of religion.

ii) The activities of religious denomination other than related to purely essential and integral part of the religious activities can well be regulated by law.

iii) The distinction in regard to the two kinds of activities and extent of their protection from outside interference is discernible by a bare perusal of Clauses(b) and (d) of Article 26.

iv) Section 25 A only provides for constitution of a Managing Committee to have control over the matter of utilization of the annuity and verification of proper maintenance of the institution.

v) None of the activities as assigned to the Committee relate to the performance of religious activity of the Satra.

vi) The objective behind the amended provision is to remove the intermediaries who enjoy much benefits as individuals against the interest of the institution.

vii) In such circumstances, any law as enacted to have a control on the financial management of the institution would only serve the public purpose as against the individual interest of those who may be in helm of the affairs of the religious institution. Such a precaution is permissible and comes clearly within the sweep of Clause(d) of Article 26 of the Constitution.

viii) Clause(2) of Article 25 of the Constitution clearly provides that nothing in the said Article shall prevent the State from making any law regulating or restricting any economic, financial, political or secular activities which will be associated with religious practice.

ix) Whether a particular provisions affects or touches any particular religious activating being the essential and integral part or not would always be a question of fact.

x) Having regard to the composition of the Managing Committee to oversee the financial affairs of the institution, the chances of apprehension of reduction of the required expenditure undermining the performance of religious rituals is too remote so as to render Section 25A invalid and inconsistent.

xi) The activity to be regulated by the Committee of Management constituted

under Section 25 A of the Act would be only secular in nature.

xii) The purpose contemplated in Section 25 A is to check wasteful expenditure which may even destroy the institution and its endowments.

xiii) Though the Committee is headed by a civil servant, the same cannot be considered to be an absolutely outside authority having regard to the overall constitution thereof.

xiv) Even if the Deputy Commissioner or the SubDivisional Officer belongs to any other community, having regard to the flexibility provided by the provision, there is a scope of having yet another person nominated to act as the President so as to avoid any situation where the exofficial holders of the office may belong to any other community.

xv) As out of the 7 constituents of the Committee, 5 devotees of the religious denomination would be the members, the provision is workable to deal with different situations in absence of any rigid norm to the contrary.

xvi) Whatever rights the petitioner may have in regard to discharge of duties in running the Satra in so far it relate to utilization of annuity and verification of maintenance of the Satra, the same would be subject to the provisions of Section 25A. xvii) The protection of Article 31A and 31B is not available to the Amending Act XIX of 1987 introducing Section 25 A to the parent Act.

xviii) There is no constitutional embargo in amending the Act on receiving the assent of the President by the State Legislature.

This Court in addition observed that neither the competence of the State Legislature to legislate on the subject concerned had been challenged before it nor it had been shown that the amending provision was inconsistent with or repugnant to any existing provision of the Act.

108. As would thus appear from the text of the aforesaid decision, though the plea that Section 25A is beyond the professed object of the principal Act had been taken therein, no endeavour was made to establish that it was inconsistent with or repugnant to any provision of the parent legislation.

109. Be that as it may, in the teeth of the determinations made as above and the findings recorded hereinbefore on the aspect of res judicata, it would be essential to assay the tenability of the grounds of challenge taken herein visavis this provision of the Act. Section 25 A having regard to its theme and the permissive realm of legislation outlined in Article 25 and 26 of the Constitution of India cannot be dismissed to be beyond the law making powers envisaged by the constitutional scheme of legislation. However, in view of its assimilation with the parent Act, its constitutional validity from the view point of legislative competence has to be judged by its compatibility or otherwise qua the design of the parent enactment. This indeed has been the emphasis to denounce its vires.

110. The Act which has been held hereinbefore to be a legislation to further land

reforms, decipherable embodies afacet of acquisition of land for realization of that goal. It is a conglomerate whole of a variety of essential constituents, namely, acquisition of land of religious or charitable institution of public nature, retention of land of its choice by such an institution, compensation in the form of annuity for the land acquired and distribution thereof in consonance with the salutary and ultimate purpose of land reforms. These ingredients of the Act are inseverable and form intrinsic parts thereof.

111. The statement of objects and reasons of the Amending Act discloses the following impelling factors therefor;

i) certain religious or charitable institutions of public nature whose lands had been acquired did neither take proper steps for finalization of compensation nor did they file appeal within the stipulated time;

ii) it was felt necessary to enhance the annuity payable to the institution due to rise of market price of essential commodities for its maintenance and upkeep;

iii) it was felt imperative to have control over the annuity and to verify and audit the accounts to the satisfaction of the concerned authority.

112. The State Government being of the view, in the above premise, that it ought to be empowered to review cases for correction of bonafide mistakes in the assessment of compensation and to ameliorate inconveniences faced by the concerned institution due to fixation of lesser annuity introduced the remedial provision. The amendments occasioned read as a whole reveal empowerment thereby of the State Government to call for records and pass orders for correction of bonafide mistakes in the assessment of compensation either of its own motion or on application of the persons interested after providing an opportunity of hearing to them. Provision for constituting a grantfundinaid to the religious or charitable institution of recurring or nonrecurring nature was also made. Adequate enhancement of the amount of annuity in cases of grantinaid of recurring and nonrecurring nature has been sanctioned. Section 25 A which occupies the centre stage of the controversy is couched in the following language:

"25A. Constitution of Managing Committee. For each of the Religious or Charitable Institution of Public Nature a Managing Committee shall be constituted with the following members to have a control over the matter of utilization of the annuity and verification of the proper maintenance of the institution:

a) Deputy Commissioner or SubDivisional Officer or his nomineePresident.

b) Exofficio Secretary to be elected by the Deuris/Bordeuris.

c) 5(five) elected members to be elected from amongst the devotees.

The term of the Committee shall be for three years from the date of its constitution."

113. This provision when read in the framework of the Act irrefutably relate to

those pertaining to compensation in the form of annuity to ensure optimum utilization thereof. Not only the amendments including Section 25 A are Actfriendly, but consolidate the same in essential aspects as well. Section 25A cannot be dubbed as dissentient to the basic structure of the parent enactment and by no means can be discarded as mutilate of the fundamental features thereof as a dominant legislation for land reforms. As the statement of objects and reasons would disclose, the same reveals the realization of the State Government of the need for enhancement of compensation/ annuity and displays as well its abiding concern for securing proper utilization of the annuity as well as maintenance of the institution concerned. The State Government's anxiety on these counts finds genuine expression in the amendments which, in our estimate, are in furtherance of the purpose of the Act and, thus, cannot be dissociated therefrom.

114. This Court in *Anil Kr. Bhattacharjee (supra)* while examining the challenge to the constitutional validity of the Assam Fixation of Ceiling on Land Holdings Act, 1956 had observed that the preamble is not exhaustive to wholly encompass the legislative intendment actually conveyed thereby. It was enunciated that if the words of the preamble are not so large and extensive as in other parts of the enactment and that upon a review of the whole, it can be said that the larger expression used in other parts shows what the intent of the legislature is, it is the duty of the court to give effect to the larger expression notwithstanding that the phrases of less import may be contained in the preamble. It was observed that the evil recited in the preamble may be the chief motive for the legislation but the remedy may consistently and wisely be extended beyond the cure thereof.

115. A literal construction of the preamble of the impugned Act, therefore, ought not to chain the ambit thereof and all incidental yet essential ingredients constituting it as a consummate whole need be accounted for as well.

116. A part from the judicial pronouncements delineating the principal grounds of challenge to the constitutionality of a statute, namely, (i) lack of legislative competence, and (ii) violation of any fundamental right guaranteed in PartII of the Constitution of India or of any other constitutional provision, reliance in particular has been placed on behalf of the petitioner in the decision of the Apex Court in *S.S. Bola & Ors. (supra)*. Defining the doctrine of fraud on the Constitution and legislative power therein, their Lordships while referring to the former held that that the same connotes framing of a law by a legislature in the face of a constitutional prohibition rendering it void ab initio. Fraud on legislative power, the Apex Court expounded, was, on the other hand, a situation where though empowered the legislature had not exercised the power as envisaged. That the statement of objects and reasons and the preamble of an Act are introduction to the minds of the makers of law was declared by the Apex Court in *S.S. Bola (supra)*. Their Lordships held that these determinants cannot be eschewed from consideration while testing the constitutionality of a legislation.

117. Section 25 A viewed in this context cannot be construed to be alien to the lay out of the parent Act. This provision postulates the exigency of a Managing Committee and prescribes the composition thereof by designations only. While notifying the authority to be the Chairman, it specifies elections to be the mode of selection of the exofficio Secretary and the five members. The electorates for the two positions have also been indicated. No power as such has been conferred on any authority to act as supreme and omnipotent. Though the provision is wanting in details on the modalities for conducting the elections, the allegation of arbitrary conferment of unregulated power is apparently misplaced. Section 25A, as would be apparent on its face, only engrafts the enjoinder of the legislature for the constitution of a Managing Committee to exercise a control over the matter of utilization of the annuity and verification of the proper maintenance of the institution. That the provision is in furtherance of public interest, having regard to the nature of the institution involved, cannot be doubted. The absence of details of the manner in which the elections are to be held, thus, per se does not have a determinative bearing on the provision rendering it nonest.

118. Very often when called upon to do so being confronted with the task of ascertaining as to whether an enactment is rooted to the legislative entry where under it is professed to have been framed, the doctrine of "pith and substance" needs to be applied. While dilating in details on the essentials of this doctrine, the Apex Court, amongst others, in *Union of India & Ors. Vs. Shah Goverdhan L. Kabra Teachers' College* (supra) had observed that the power to legislate under the Constitution was engrafted in Article 246 thereof and the various entries for the three lists of the Seventh Schedule are the "fields of legislation". It was held that the different entries being only legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State Legislatures. Their Lordships emphasized that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any list it would be nor be reasonable to import any limitation therein, A word of caution was, however, sounded to convey that the rule of widest construction would not, however, enable the legislature to make a law relating to a matter which has no rational connection with the subject matter of an entry. Their Lordships propounded that the entries in the different lists should be read together without giving a narrow meaning to any of them but while doing so, one entry cannot be interpreted to override another or to render it meaningless. While underlying the essentiality of a reconciliation in cases of conflict between two entries, the Apex Court referred to the doctrine of "pith and substance" to mean that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature, it cannot be held to be invalid merely because it incidentally encroaches on matters allocated to another legislature. It was observed that the question of invasion into the territory of another legislation is to be determined not by degree but by substance.

119. In view of the categorical and resounding expositions of the doctrine of

"pith and substance" as synopsisized hereinabove, it is considered inessential to refer to the other authorities on the same topic for the sake of brevity.

120. Section 25 of the Act which deals with delegation of power by the State Government to such officer or authority subordinate to it also cannot be lost sight of. Such empowerment as this provision would manifestly reveal, is intended to be subject to such conditions, restrictions and limitations as may be specified in the notification to that effect. This is in addition to the residuary power reserved with the State Government to take any action not inconsistent with the provisions of the Act that may be felt necessary for the purpose of removing any difficulty that may arise in giving effect thereto. These provisions are clearly supplemental in nature and can permissibly be read in conjunction with Section 25 A to make the statute workable. Though the Rules referred to hereinabove do not attend to the requirements of Section 25A, it is always permissible for the State Government to issue necessary executive instructions to actualize the legislative mandate contained therein. This is more than obvious from Section 25 and 29.

121. Section 25 A having outlined the fundamentals, the State Government can exercise its powers under Section 25 and 29 of the Act furnishing the working details for the implementation thereof. The legislation being predominantly for public purpose should, in the opinion of this Court, be permitted plenary operation to actuate its goal and all attempts to scuttle the same ought to be discouraged. The impugned provision of the Act has not yet been permitted to be enforced by protracted rounds of litigation prompted by an unfounded alarm. Resultantly, the free flow of the consequences legislatively intended has been muzzled rendering the provision otiose for all practical purposes.

122. In conclusion it, thus, cannot be held that Section 25 A is wholly extraneous to the underlying objective of the Act and is inconsistent with the framework thereof so as to be construed to be a piece of colourable legislation. As determined hereinabove, this provision is well within the contours of Article 25 and Article 26(d) in particular. The authorities cited at the Bar disapproving conferment of absolute discretion is of no avail to the petitioner as this impugned provision cannot be faulted with this vice. The statement of objects and reasons in the amendment introducing, amongst others, Section 25A, in our view, provides justifiable background catering to the overall interest of the institution in particular and public interest in general. This provision in fact reinforces the institutional exigency of a properly constituted Managing Committee to have effective and result oriented control over the utilization of the annuity as well as for proper maintenance of the institution. The pleas to the contrary lack in persuasion and are, thus, rejected.

123. In view of the conclusions arrived at qua the inurnment of the Act as well as Section 25 A thereof, there is no warrant to adjudge the legislation to be constitutionally invalid. The challenge to that effect, therefore, is rejected.

124. A fervid assertion noticeably had interspersed the animated debate on the abstruse legal issues seeking judicial intervention to facilitate the election of the "Doloi" at the earliest by dissolving the prevailing impasse. The respondents in particular have vehemently insisted on the adherence to the age old custom limiting the franchise to the four identified families of "Bordeuris". The pleadings of the parties, the bare essentials whereof have been recited hereinabove, unanimously record the historical fact that following the construction of the main temple of Kamakhya and other subordinate places of worship, the Ahom Kings and their officers and agents distributed vast stretches of immovable properties to ensure regular supply of all requisites for performing the religious functions. Whereas the Brahmins were detailed for higher religious services, the nonBrahmin Paiks were identified for secondary/ subordinate services. The Brahmin and nonBrahmin factions together comprised the community of the "Shebaitis". They were dealt with separately visavis the facilities extended to them against the services rendered. The internal management of the temples rested in the principal families of priests designated as "Borpujaris", "Bordeuris" or "Pandas". Though the Ahom Kings appointed persons known as "Sevacholoas" for supervising the worship and other affairs relating to the temple and also for managing its properties, eventually the a forenamed chief families of the priests came to be in control of the affairs of the administration as a whole and stood accepted to be the governor of the trusts of the properties of the institution. The traditional practice amongst the "Bordeuris" was to elect one of them as a "Doloi" whose duty was to supervise the religious rites and customary precepts in the temple. After the advent of the British in 1826 and their adoption of the policy of noninterference with the Hindu religious institutions, both the religious and secular activities thereof came to be discharged by the "Dolois" who enjoyed the unquestioned confidence of the Shebaitis called Borpujaris.

125. The petitioners have not denied this fact chronicled in the ancient records and from time to time referred to and accepted by the Courts as testament thereto. According to them, the system continued till 1970, whereafter, a constitution for the management of the affairs of the Kamakhya Temple in a systematic manner was drafted and submitted with the learned District Judge, Kamrup, Guwahati on 22.4.98. Visibly a time gap of over two decades is apparent. The petitioners have farther claimed that on 25.10.98 a general meeting of the public comprising of Bordeuris, Paiks, Pandas and other Brahmin and nonBrahmin Shebaitis was held and the Kamakhya Debutter Regulation, 1998 was adopted in terms of which the Kamakhya Debutter Board was constituted. It is a matter of record that the constitution claimed to have been formed in the year 1970 had been rejected by the learned District Judge vide his order dated 21.10.98 which was unsuccessfully challenged in Civil Rule No. 6221/98 before this Court.

126. As held hereinbefore, the petitioners have failed to establish that the Regulation as well as the Board had meanwhile either been ratified by a Court of law or acquired a legal status of binding significance in support of their plea of

relinquishment of the customary practice of election of "Doloi" by the four identified families of "Bordeuris". To reiterate, there is no statutory enactment either holding such practice to be illegal or substituting the same by any other mode of election. That no election of "Doloi" had in fact been held after 1996 and for that matter, during the professed regime of the Board, is an undisputed fact. This is of great import in the face of the respondents' contention against the validity of the Regulation or the Board to claim any status to be incharge of the affairs of the religious institution in any manner whatsoever.

127. The official respondents in particular have alleged that though the term of the earlier Managing Committee had long expired, the two officiating "Dolois" could not furnish the accounts of the receipts offered by the devotees as well as of the funds through other sources of the institution. Not only it was imputed that the existing Committee did not allow constitution of a new Body for which the members of the "Bordeuri Samaj" had requested the Government for its intervention, there were accusations of overall mismanagement of the affairs of the institution as well. One of the then Dolois, Sri Jnanada Prasad Sarma also expressed his willingness to relinquish the charge of his office. The respondents, therefore, pleaded that an adhoc Committee was, thus, constituted for taking the preparatory steps for the formation of the Managing Committee under Section 25A through a process of election as contemplated therein. The petitioner in WP(C) No. 53857 2000 has annexed an affidavit filed on behalf of the respondent Nos. 1,2 and 3 in Civil Rule (P1L) No. 35/97 mentioning inter alia about the mismanagement of the Kamakhya Devalaya and its assets. In his affidavit in opposition dated 30.1.2002 filed in WP(C) 6184/2000 the Deputy Commissioner, Kamrup, Guwahati has annexed a letter dated 19.3.2001 of Sri Gnanada Prasad Sarma in the capacity of the President/ Doloi, Kamakhya Temple addressed to his office expressing his unwillingness to continue because of his old age and failing health reiterating as well the mismanagement of the affairs of the Kamakhya Temple and further expressing the apprehension that some unauthorized persons may take advantage of the situation and cause further damage to the institution. The failure on the part of the institution to lay its claim in Form C for fixation of permanent annuity and for interim annuity beyond 1398 B.S. for want of utilization certificate thereof does not augur well qua the quality of administration of its affairs.

128. In the above factual premise, in absence of any law replacing the otherwise admittedly prevalent customary practice of electing the "Doloi" by the four families of "Bordeuris", the same cannot per se be said to have been abandoned as on date for all intents and purposes. There is, to repeat, no proven legal authority of the Board and legally acknowledged status of the Regulation to sustain the plea of the petitioners to this effect. Apart from the nonexistence of any law effacing the customary practice as above, in absence of any overwhelming and regnant proof of extinction thereof with the framing of the Regulation and the emergence of the Board, its continuance as on date, the intervening logjam notwithstanding has to be accepted. The petitioner(s) though

assiduously assertive of the validity of the Regulation and the authority of the Board, has/have failed to convincingly explain the failure to hold election to the office of the "Doloi" prior to the intervention of this Court at his/ their instance, wheretter, he/they dogmatically pursued the legal battle and secured a statusquo of the state of affairs.

129. The initial endeavour made by the Deputy Commissioner, Kamrup vide his order dated 15.9.2000 to commence the process for constitution of the Managing Committee under that provision after the rejection of the challenge to the vires of Section 25A also got scuttled due to the challenge made thereto by the petitioner and the interim orders dated 25.9.2000 and 22.11.2000 passed by this Court in WP(C) No. 5385/2000 and WP(C) No. 6184/2000 respectively. The order dated 18.3.2002 of the Deputy Commissioner, Kamrup, Guwahati in terms of the order dated 25.9.2000 passed in WP(C) No. 5385/2000 appointing Sri S.K. Roy, Addl. Deputy Commissioner, Kamrup to discharge the functions of the Managing Committee to be constituted under Section 25 A was challenged by the petitioner in WP(C) 295 5/2002 and vide order dated 13.5.2002 this Court restrained the respondents from using the main "Bharal" and the existing office of the Board. The respondents were also restrained thereby from interfering with the functions of the sacred "Peethas" of Jal Kuber and Dhan Kuber and the religious functions of the Kamakhya Temple.

130. The learned Single Judge in the operative portion of the impugned judgment and order recorded the view that there was no justification to permit the adhoc Committee constituted by the order dated 15.9.2000 to assume office and in that premise, directed the State Government to take all followup action necessary to constitute a regular Committee within a period of three months. The arrangements made from time to time by the interim orders dated 25.9.2000, 22.11.2000 and 13.5.2002 as above were allowed to continue visavis the administration of the secular activities of the Devalaya till a regular Committee under Section 25A of the Act was constituted. Understandably, these directions did not take within their sweep the process of election of a Doloi/Dolois for conducting the religious activities of the institution. This notwithstanding, the reasons recorded in the impugned judgment and order against the constitution of the adhoc Committee vide order dated 15.9.2000 in the face of the justifications set out in the pleadings of the official respondents, do not commend for acceptance.

131. Be that as it may, two valedictory aspects of the present exercise need studied attention i.e. the process of election to the office of Doloi and that to the Managing Committee under Section 25A.

132. Confronted with the proponent archival, disclosures evidencing the customary practice of election of "Doloi"(s) by the four families of Bordeuri only, the learned senior counsel for the petitioner has sought to thwart the same by contending that as such usage can by no means be construed to be from the time immemorial, it cannot be accepted to be a custom having the force of law.

Referring to the pleadings, it has been emphasized that as the practice at the best is traceable to the genesis of the British regime in 1826, it cannot be claimed to be beyond legal memory and, thus, the practice of election of "Doloi" by the four families of "Bordeuri", in any view of the matter, cannot be exalted to the echelon of custom with all consequential implications. Paragraph 401 of Halsbury's Laws of England, 4th Edition, elucidating the notion of custom as hereinbelow has been relied upon.

"CUSTOM

(I) MEANING OF CUSTOM

401. Meaning. A custom is a particular rule which has existed either actually or presumptively from time immemorial and obtained the force of law in a particular locality although contrary to, or not consistent with, the general common law of the realm. As regards the matter to which it relates, a custom takes the place of the general common law and, in respect of that matter, is the local common law within the particular locality where it obtains. Custom is unwritten law peculiar to particular localities.

A custom exists in a particular locality only in respect of some particular matter or matters; other matters within the same locality are governed by the general common law."

133. The acknowledged essential attributes of a custom indubitably are: (i) it must be immemorial; (ii) it must be reasonable; (iii) it must be certain in respect of its nature; and (iv) it must have continued without interruption since its immemorial origin. Immemoriality, thus, is an imperative trait of a custom to attain the force of law with binding relevance. In this context, Paragraphs 407 and 421 from the Halsbury's Laws of England, 4th Edition defining "immemorial existence" and "legal memory" appears to be formidably apt and are quoted below:

"407. Presumption of immemorial existence. Every custom must have been in existence from a time preceding the memory of man, a date which has long since been fixed at the year 1189, the commencement of the reign of Richard I, Where, however, it is impossible to show such a continued existence, the courts will support the custom if circumstances are proved which raise a presumption that the custom in fact existed at that date. Evidence showing continuous user as of right as far back as living testimony can go is regarded as raising this presumption.

Again, if proof is given of facts from which it can be inferred that user corresponding to the alleged custom in fact existed at some time past, the existence of the custom from the remoter era will be inferred. The courts favour such an inference, and are slow to draw an inference of fact which would defeat a custom which has apparently existed for a long time; and it is a maxim of the law to give effect to everything which appears to have been established for

a considerable course of time, and to presume that that which has been done was done of right and not in wrong. It is convenient that every supposition not wholly irrational should be made in favour of longcontinued enjoyment; consequently it is a rule of law that wherever there is an immemorial custom the court must presume everything possible which could give it a legal origin.

421 .Legal memory. Inquiry is wholly unnecessary for the purpose of establishing a custom if (i) it is proved to have in fact existed in 1189 and to have continued ever since, or (2) it is shown that the custom has existed for a number of years and the circumstances are such as to raise the presumption of its existence from 1189, and no evidence is forthcoming to rebut this presumption, for, in such circumstances, no evidence is admissible to show that the origin of the custom was earlier than 1189 or that its origin was wrongful, provided only that the custom is not unreasonable.

The discovery of the actual origin of a practice which is relied upon as proving the existence of a custom may, however, be effectual to show that the custom did not in fact exist. Thus, if the alleged custom can be shown to have originated in wrong, or usurpation, or in some unreasonable manner, or to have owed its origin to an invalid grant, or to have first existed subsequently to the year 1189, the presumption raised by proof of its enjoyment in more recent times will be rebutted and the claim will fail."

Legal memory, or time out of mind" has been defined in Words and Phrases, Volume 24A as;

" Legal memory, or time out of mind," was in England, under the statute of limitation of 32 Hen. VIII. 60 years. In Massachusetts the time of legal memory is analogous to the time prescribed for bringing a writ of right. In New York previous to 1830 it was 25 years, and subsequent to that time it was 20 years. *Miller v. Garlock*, N.Y., 8 Barb. 153,154."

134. The word "legal memory" has been defined in the Advanced Law Lexicon, Volume3, 3rd Edition by P. Ramanathan Aiyer as "A period fixed by statute to begin with the reign of RichardI, since reduced to 20 years. The period during which a legal right or custom can be determined. Traditionally, common law legal memory began in the year 1189, but in 1540 it became a steadily moving period of 60 years."

135. The expositions on the various facets of custom when juxtaposed with the pleadings and other materials on record as obtained in the instant case, do not detract from the proposition of the prevalence of the one of election of "Dolois" by the priests of the four families of "Bordeuris". The records which have been judicially noticed from time to time in support of this fact seek to hand down this practice from generation to generation and it would, thus, be incorrect to infer against the existence or prevalence of such custom pegging the point of time of its origin only from the British era.

136. Not only the authoritative elucidations in the above extracts permit an inference of the existence of custom judged by its duration in terms of years, circumstantial testimony of its continuity and invocation may be clinching.

137. The petitioners have, as their pleadings disclose, unreservedly accepted this customary practice till at least 1970 and are, therefore, in a way estopped from raising a plea contrary thereto. The records which trace this practice lucidly demonstrate that even prior to the British era the "Dolois" were elected by the electorate of the four families of "Bordeuris" only and were engaged in the actual religious functions of worship. It was after the adoption of the policy of noninterference with the management of the Hindu religious institutions by the British that the "Dolois" who continued to be elected in the similar fashion also took the overall charge of the administration of the secular activities of the institution as well. Reference to the state of affairs during the British regime, therefore, ipso facto is not an overriding consideration against the existence and continuance of such customary practice. The plea that the learned Single Judge by his observations bearing on the system of election of "Dolois" had impliedly accepted the abandonment of such customary practice does not appeal to us.

138. The authorities cited at the Bar pertaining to the assailment of legislations in the perspective of constitutional safeguard under Article 25 and 26 are not of much relevance in absence of any enactment in the same lines under scrutiny herein. However, as the Apex Court while dwelling on the various aspects of the challenges made had dilated upon certain singular facets of religious belief and faith fundamental to the mode of worship in Hindu religious institutions, a brief reference thereto would be expedient.

139. In *N. Adithyayan (supra)*, their Lordships recalled in this context the observations of the Apex Court in *Sardar Syedna Taker Saifuddin Saheh Vs. State of Bombay*, AIR 1962 SC 853 to the effect that the content of Article 25 and 26 of the Constitution is not limited to matters of doctrine or belief, but extend also to acts done in pursuance of religion and therefore, engraft a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. It was recorded as well that the Courts are to decide as to what constitutes an essential part of a religious practice with reference to the doctrine of a particular religion as well as the practice regarded by the community to be a part of its religion.

140. In *Seshammal & Ors. Vs. State of Tamil Nadu & Ors.*, (1972) 2 SCC 11, the Apex Court observed in the contextual facts that the idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the rites which must be avoided at all costs. thus, under the ceremonial law pertaining to temples even the question as to who is to enter the sanctum sanctorum and who is not entitled to enter it and who can worship and from which place are all matters of religion.

141. In *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi (supra)*, the

legislation under challenge clearly maintained a distinction between the religious functions entrusted to the priests and the secular affairs of the administration and management of the temple. The enactment enjoined the priests of the temple to perform the rituals in accordance with the Hindu Shastra, scriptures and usages. Their Lordships held that the religious freedom guaranteed by Article 25 and 26 is intended to be a guide to the community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order and that these two salutary Articles seek to strike a balance between the rigidity of the right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and the guaranteed freedom of conscience to commune with his Cosmos/Creator and realize his spiritual self. Their Lordships remarked that religion has its basis in a system of beliefs which are regarded by those who profess it to be conducive to the future wellbeing and that it is not every aspect of the religion that requires protection of Article 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. That administration, management and governance of a religious institution or endowment are secular activities and the State could regulate them by appropriate legislation was also underlined.

142. Judged in the above legal and factual perspectives, sans a legislation denouncing the age old customary practice of electing the "Doloi"(s) by the priests of the four families of "Bordeuris", it would be impermissible in the teeth of the materials on record to conclude that this system has either been lost in oblivion or is extinct as on date. The subtle yet tangible features of Hindu religious faith, belief and convictions bearing on their religion as noticed by the Apex Court cannot possibly be wholly divorced from the continually felt essentiality of electing a "Doloi" from amongst the identified families of "Bordeuris" to conduct and supervise the essential rituals of worship.

143. The religious endowment as the pristine seat of the revered deity Ma Kamakhya is an ancient institution of international repute. The divine presence of the Goddess is awe inspiring and majestic eliciting spontaneous drawal of thousands of entranced devotees, teeming worshipers and fascinated tourists from all over the world. The religious endowment by this time has earned a pride of place in the global consciousness. Deep rooted religious sentiments apart, there is a groundswell in demand for transparency and sanctities in the management of its affairs befitting its spiritual eminence. This has been constantly highlighted before us de hors the complex legal orientations. To say the least, the stalemate in the matter of election of "Doloi" and the Managing Committee as well as the long drawn legal confrontations have given rise to serious misgivings threatening to denude the institution of the sheen of its glorious past, thus, warranting immediate resolution of the deadlock and discontinuance of the aphorism that subsists as on date on both these fronts.

144. The learned counsel for the parties have in course of their arguments

implored upon this Court to issue necessary directions irrespective of the verdict on the legal issues providing objective guidelines to all concerned for efficient and orderly administration of the affairs of the institution, both religious and secular as is being fervently aspired for by the constituents of the institution in particular and the devotees in general.

145. Situated thus, we consider it appropriate, in the exercise of our extraordinary jurisdiction and in response to the exceptional fact situation that exists, to issue the following directions :

i) Election to the office of the Doloi (s) would be held as per the customary practice confining the electorate therfor to the four families of Bordeuris, namely, Buras, Dekas, Vidhipathaks and Hotas.

ii) The State Government in consultation with the Deputy Commissioner, Karnrup would formulate the norms/ guidelines for the election to the Managing Committee contemplated by Section 25 A in terms of the letter and spirit thereof. The norms/guidelines would, amongst others, provide for:

a) Identification of the electorates for election to the post of exofficio Secretary as well as members envisaged in Section 25A.

b) Criteria of eligibility to contest the election to these posts and to exercise the right of franchise.

iii) The Deputy Commissioner, Karnrup, Guwahati would work out the modalities in details on the basis of the norms so framed and notify the same for general information and, thereafter, hold the elections in adherence to the calendar therefor encompassing the various phases thereof.

iv) The Deputy Commissioner would follow the pattern of conducting elections as statutorily conceived of starting from the notification initiating the process therefor till the declaration of the results.

146. The exercise as indicated hereinabove, both for the election to the office of "Doloi" as well as to the posts mentioned in Section 25A should positively be completed within a period of three months herefrom. The Chief Secretary, Govt. of Assam is requested, having regard to the preeminent import of the enterprise, to oversee the same to secure its timely and proper completion.

147. The Deputy Commissioner, Kamrup, Guwahati would take immediate steps in compliance of these directions and submit monthly reports of progress to this Court till the process as ordered is completed. The Head of the religious institution, as defined by the Act, immediately after completion of the elections would submit the claim for compensation/ permanent annuity under Form C of the Rules aforementioned and the concerned State authority would do the needful forthwith in this regard.

148. The amount of Rs. 50,000/ deposited by the State Government in the Registry of this Court in compliance of the order dated 7.3.2003, if still available

for payment to the institution as per the banking norms, would stand adjusted against the final amount of compensation/ permanent annuity. This exercise would be completed in strict compliance of the Act and the Rules.

149. In the result, having regard to the determinations made on the various issues discussed hereinabove, the challenge to the validity of the Act including Section 25A thereof fails. The assailment of the impugned judgment and order also lacks in substance.

150. Consequently, WP(C) No. 923/2005, W.A. No. 311/2004 and W.A. No. 312/2004 are dismissed. The impugned judgment and order stands modified to the extent as indicated hereinabove. The parties are left to bear their own costs.