
(2002) 05 GAU CK 0041
In the Gauhati High Court
Case No : Civil Revision No. 226 of 1995

Sashi Kanta Sarma

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 21-05-2002

Acts Referred:

Citation : (2003) 2 GLR 226

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : P. Sarma, A. Das and M. Goswami, for the Appellant; C.K. Sarma Baruah and N. Das, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—In 1930 a Suit was originated being Original Suit No. 12/1930 before the then Court of Special Judge, Assam Valley District at Guwahati u/s 92 of the CPC for formulating a Scheme for better management of the affairs of Ugratara Temple which has been situated in the heart of the Guwahati city at Uzanbazar. This temple was established during the reign of Ahom Kingdom of earstwhile Assam. The management for preservation of the said temple had been run by a Trustee consisting of two families of Bardeoris as Trustees. These two families had been consisted of Bardeoris one at Degheli and the other at Soalkuchi in the District of Kamrup. These Bardeoris were regarded as the real trustees of the temple. Amongst these Bardeoris one Doloi had been selected for supervision and management of the worship and the properties of the temple. Since there was some dispute amongst Decries as well as the matter relating to powers and functions of the Doloi of the temple, the above mentioned suit was filed for formulating a Scheme. In the said Suit the learned Special Sub-Judge by his final decree dated 10.2.1936 ordered and decreed that the scheme was prepared for better management of the Trustees in connection with Ugratara Temple at Guwahati and the same Scheme was attached with the decree. The said Scheme was also confirmed by the then Calcutta High Court which exercised

the jurisdiction over the State of Assam during that time prior to establishment of the Gauhati High Court, The said decree along with the Scheme has been annexed as Annexure - A to this Revision Petition. The relevant provisions of the Scheme is essential and necessary for the purpose of proper adjudication of this case in hand are produced hereunder.

"1. Bardeoris :

The Baideoris are the real trustees for the Temple and all endowed properties, and the due management of the affairs relating thereto primarily vests in them -

I. The status of a Bardeori or the right to become a Bardeori will be regulated by lineal male descent from original Bardeoris."

.....

II. Management :-

1. Managing committee :-

There should be a Managing Committee consisting of 7 (seven) members for the management of the temporal affairs of the Temple, the Doloi being a member of the Committee by virtue of his office. Of the remaining six, 4 will be elected from the Bardeoris, two by each branch called Digheli and Sualkuchi branches respectively. The other two (one of whom shall always be from among the tenants of the Ugratara Bhogdhani lands in Gauhati Town) will be nominated by the Judge from the Hindu public of the Gauhati Town.

Note - Where even the term "Managing Committee" or "Committee" appears in the Scheme; the "Managing Committee in a meeting assembled" will be implied.

2. Secretary and Auditor -

One of the two outsiders will be appointed Secretary and the other Auditor, if no other outsider be found willing to work as Auditor without remuneration. These appointments shall be made by the Managing Committee, and vacancies in any shall also be filled up by them."

.....

.....

4. Terms of office of members :-

The Members of the Managing Committee will hold their offices for five years, but will always be eligible for re-election.

In case of interim vacancy, there will be a by-election or fresh nomination as the case may be, for which the orders of the Judge must be asked for.

5. Daloi and term of his office :-

The Daloi shall be from among the Bardeoris and be elected by them. He will

hold his office ordinarily for ten years. There will be a re-election after every ten years, and the old incumbent will always be eligible for re-election."

.....

.....

"III. Alteration and Amendment of the Scheme :-

The Judge, on his own motion, or being moved by 1/3rd of the adult Bardeoris may alter, or amend any of the provisions in the Scheme from time to time, and pass such orders as may be deemed proper. But before any final step is taken, the Managing Committee is to be consulted, though it will be open to the Judge to accept its recommendations or not."

Since its formulation, it is stated that the scheme had been working without any hindrance. The management and supervision of the Ugratara temple had been run by the Managing Committee with the Doloi on being constituted under the Scheme.

2. On 20.2.1995 the learned District Judge Kamrup, Guwahati, in exercise of power vested upon him under Clause-III of the Scheme (Alteration and Amendment of the Scheme) proposed to make amendment of the Scheme by bringing several changes including the constitution of the Managing Committee by increasing existing number taking into consideration the fact that the scheme under which the temple has been managed is also 60 years old and by this time numerous social changes have been taken place including the increase in population necessitating the increase of number of managing committee from existing number of seven. In that process the learned District Judge, on 15.3.1995 ordered the proposed amendment in the following terms :

"(a) Sub-para 1 of para II (except the note below) shall stand substituted as follows :

"1. Managing Committee :

There shall be a Managing Committee consisting of 11 (eleven) members for the management of the temporal affairs of the Temple, the Doloi being a member of this committee by virtue of his office. Of the remaining ten, 6 will be elected from the Bardeoris, three each by the branches called Digheli and Sualkuchi. The other four (two of whom shall always be from among the permanent residents within a radius of half a kilometre from the Temple) will be nominated by the Judge from the Hindu public of Guwhati city."

(6) The word Tour" appearing in sub-para 3 of para II shall stand substituted by the word "Six".

(c) After sub-para 6(b) of para II the following new sub-para shall be added :

"6(c) In case of death or physical/mental incapacity of the Doloi during his continuance in office, a new Doloi will be elected by holding by-election as soon

as practicable. Such election shall be conducted by the Managing Committee with the approval of the Judge and the result reported to the Judge for final orders. The Judge will make arrangement in consultation with the Managing Committee for carrying out the work of Doloi during the intervening period.

(d) The figure "4" appearing in the third para of sub-para 3 of para X will be substituted by the figure "6".

3. Thereafter the said management has been given effect to by the learned District Judge by his order dated 29.3.1995. Consequent upon such amendment, an election for the Doloi and six members (three each from Dighali Branch as well as Sualkuchi Branch) was held on 21.5.1995. Subsequent to such election, on 24.5.1995 the learned District Judge by his order constituted the Managing Committee of 11 members with the 7 (seven) elected members including the Doloi as well as 4 (four) nominated members nominated by him who is authorised to nominate such 4 (four) persons under the amended Scheme itself. This impugned order dated 24.5.1995 selecting 11 members including a Doloi to constitute the Managing Committee as well as the amendment made by the learned District Judge are the subject-matters of challenge in this Civil Revision Petition.

4. I have heard Mr. K.P. Sarma, learned Sr. counsel assisted by Ms. A. Das for the Petitioner and Mr. C.K. Sarma Barua, learned Sr. counsel for the respondents. The argument of Mr. K.P. Sarma, learned Sr. counsel is two fold; His first argument is that the constitution of the Managing Committee in question itself was illegal and the same had been effected behind the back of the Petitioners who are Bardeoris recognised as the real Trustee under the Scheme, Even they were not consulted either at the time of proposing for the amendment or in effecting the amendment. 2ndly, he has argued that the election as per the impugned order cannot be sustained as the same was held in an irregular and illegal manner.

5. On the other hand, Mr. C.K. Sarma Barua, learned Sr. counsel appearing on behalf of the Respondents, opening his argument, has raised the question of maintainability of the present Revision Petition. It is pleaded that this present Petition is not maintainable because neither the impugned order or the amendment under challenge is a judicial order and the same is absolutely an administrative order. The learned District Judge, in exercising of his power under the Scheme, has acted as persona designata and as such, it is neither a Court nor a Tribunal to attract the revisional jurisdiction or superintending jurisdiction of this Court. In support of his submissions, the learned Sr. counsel has relied on a recent decision reported in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., , wherein the Apex Court relying on earlier decision reported in Konkan Railway Corpn. Ltd. and Others Vs. M/s. Mehul Construction Co., dealing with an issue under the Arbitration and Conciliation Act 1996 (hereinafter referred to as Act) held that the order of Chief Justice or his designate u/s 11 of the Act nominating an Arbitrator is not an adjudicatory order

and the same is an administrative order. It was ruled that the Chief Justice or his designate is not a Tribunal.

6. I have given my anxious consideration to the submissions advanced relating to maintainability of the Petition and also gone through the relevant provisions of the Scheme as already noted above. Having regard to the above mentioned judicial decision, and also upon hearing the learned counsel for the parties, I am inclined to accept the submissions of Mr. C.K. Sarma Barua, learned Sr. counsel. The learned District Judge in affecting the amendment in terms of Clause-III of the Scheme as well as in constituting the Managing Committee under the amended Scheme vide impugned order dated 24.5.1995, in my considered opinion, has not determined the rights of the parties with regard to any controversy. That being so, it can be safely held that such orders are not judicial orders but only the administrative orders. As it patently appears that the Court has acted under the Scheme which provides for amendment or alteration of the scheme empowering the District Judge to act on its own motion, in the instant case, the learned District Judge has acted as persona designata and not as a Court. Therefore, such orders passed in administrative capacity and not being judicial orders, cannot be a subject-matter either of a revisional or superintending jurisdiction of this Court.

7. Accordingly, I unhesitatingly hold that this Revision Petition is not maintainable in the present forum and the same is dismissed. No costs.