

(2018) 08 GAU CK 0034
In the Gauhati High Court
Case No : Writ Appeal No.162 of 2018

Sri Kamal Sarma

APPELLANT

Vs

Sri Kabindra Prasad Sarma And 5 Ors

RESPONDENT

Date of Decision : 30-08-2018

Acts Referred:

Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 — Section 3(2), 5, 15

Citation : (2018) 08 GAU CK 0034

Hon'ble Judges : AJIT SINGH, CJ;ACHINTYA MALLA BUJOR BARUA, J

Bench : Division Bench

Advocate : J Deka, MK Choudhury, P Bharadwaj, RKD Choudhury

Final Decision : Allowed

Judgement

AM Bujor Barua, J.

1. Heard Mr. J Deka, learned counsel for the appellant. Also heard Mr. MK Choudhury, learned Senior Counsel assisted by Mr. P Bharadwaj,

learned counsel for the respondents No.1 and 2 and Mr. RKD Choudhury, learned Senior Government Advocate Assam for the respondents No.3, 4,

5 and 6.

2. The appellant being a Shebait, as well as the Chairman (Acting) of the Sri Sri Maa Kamakhya Debutter Board (as he was then) had preferred the

WP(C) No.6498/2003 assailing the re-settlement undertaken by the Settlement Officer, Kamrup in respect of certain lands belonging to the deity Sri

Sri Maa Kamakhya.

3. In paragraph 53 of the writ petition, it has been specifically pleaded that the petitioner being a Shebait and a member of the Board of Trustees have

a right to prefer a writ application to protect the interest of the deity, Sri Sri Maa Kamakhya. According to the appellant, the entire endowment of the

deity Sri Sri Maa Kamakhya comprises of not less than 31 thousand bighas of landed property which were recorded as La Kheraj land (Revenue Free

Estate) by the erstwhile British Government under the Assam Land Revenue Regulation Act of 1886. According to the petitioner, the land of the deity

Sri Sri Maa Kamakhya comprising of the Nilachal Hills, which includes the three hills of Bhubaneswari, Kamakhya and Borah, as well as

Durgasarobar and other tracks of agricultural and fishery lands, spreading over the districts of Kamrup, Darrang, Nalbari, Barpeta etc.

4. According to the appellant, the land comprising of the hills of Bhubaneswari, Kamakhya, Borah and Durgasarobar are to be retained under Section

5 of the Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 (hereinafter to be referred to

as the Act of 1959), whereas the other lands may be non-retainable lands under the said Act.

5. According to the appellant, after coming into force of the Act of 1959 the lands of the deity Sri Sri Maa Kamakhya had been acquired by the

Government through various Notifications published from time to time, although such Notifications were never served on the authorities in charge of

the management of the property of the deity, inspite of there being a requirement under Section 3(2) of the Act. The grievance of the appellant is that

the Deputy Commissioner, Kamrup, as it was then at the time of filing of the writ petition, had illegally, unauthorisedly and arbitrarily settled the lands

belonging to the deity to many different persons without following the provisions of the Act and without giving any opportunity of hearing to the

appellant or the other legal representatives of the deity.

6. The further allegations in the writ petition is that under Section 15 of the Act of 1959, the Rayats are entitled to settlement of the land which is

under their occupation subject to the provisions of Sections 5 and 6 of the Act and the respondent, Deputy Commissioner and other authorities in

exercise of its power under the Assam Land and Revenue Regulation, 1886 are not empowered to grant periodic lease of the lands of the deity . For

the purpose, the appellant refers to certain Jamabandi, both original and final, to substantiate that there had been illegal alienation of the lands of the

deity Sri Sri Maa Kamakhya.

7. In the circumstances, the writ petition has been preferred for a declaration that such illegal and unauthorized alienation of the lands of Sri Sri Maa

Kamakhya by the respondent authorities be declared to be null and void, with further direction that they be refrained from proceeding any further with

the re-settlement operation.

8. In the circumstance as narrated above, it is the case of the appellant that by preferring the WP(C) 6498/2003, the appellant seeks for a protection

of the landed property of the deity Sri Sri Maa Kamakhya and beyond that by means of the said writ petition, the appellant does not seek the

enforcement of any other right, either of himself or of the deity.

9. Apart from the present writ petition, there existed another proceeding between the appellant and the respondent No.1 and others as to who under

the law would be entitled to manage the properties of the deity Sri Sri Maa Kamakhya. While the appellant claimed the right to manage the property in

the capacity of being the Chairman (Acting) of the Kamakhya Debutter Board, constituted under the Kamakhya Debutter Regulation 1998, the

respondent No.1 claimed the right to manage the property being the head of the Bordeuri Samaj. The said dispute culminated in the Judgment and

order dated 07.07.2015 of the Honâ??ble Supreme Court in Civil Appeals No.3276-3278/2013 (Riju Prasad Sarma Vs. State of Assam and Others)

reported in (2015) 9 SCC 461.

10. In paragraph-33 of the said judgment, the Honâ??ble Supreme Court was of the view that The Kamakhya Debutter Regulation, 1998 is not a

valid instrument and has no sanction of law for depriving the customary rights of the Bordeuri Samaj to elect the Doloi, who have been customarily

exercising their rights to maintain the religious as well as secular affairs of Sri Sri Maa Kamakhya Temple. Accordingly, in paragraph-73, it was

provided that the District Administration is to ensure that the premises are vacated by the members or representatives of the Kamakhya Debutter

Board at the earliest and the premises and other properties of Sri Sri Maa Kamakhya Temple be handed to the Bordeuri Samaj through the last

elected Doloi. The purport of the said judgment of the Honâ??ble Supreme Court would be that the petitioner being the Chairman (acting) of the

Kamakhya Debutter Board would no longer be empowered to manage the

properties of the Deity Sri Sri Maa Kamakhya and henceforth, the properties be managed by the Bordeuri Samaj through the last elected Doloi. In other words, in the dispute between the appellant and the respondent No.1, the Honâ??ble Supreme Court in its judgment dated 07.07.2015 had held that it is the respondent No.1, who would manage the properties of the Deity Sri Sri Maa Kamakhya and the appellant would no longer be empowered to manage the same.

11. In the background of the judgment dated 07.07.2015 of the Honâ??ble Supreme Court in Riju Prasad Sarma (Supra), the respondent No.1 had preferred the IA(Civil) No.1252/2016 in WP(C) No.6498/2003, inter-alia praying for an order for substituting the appellant in the said writ petition.

According to the respondent No.1, as stated in paragraph-4 of the interlocutory application, in view of the judgment dated 07.07.2015 of the

Honâ??ble Supreme Court, the Deity of Sri Sri Maa Kamakhya is required to be represented by the Doloi of the Temple, who had been entrusted

with the management of the religious and secular affairs of the temple and not by any of the representatives of the erstwhile Kamakhya Debutter

Board. On the basis of the aforesaid contention, the respondent No.1 sought for substituting the appellant in the writ petition. The interlocutory

application of the respondent No.1 was contested by the appellant by raising the plea that the writ petition 6498/2003 was preferred by him by virtue

of being the Chairman (acting) of the Kamakhya Debutter Board and also by virtue of being a Shebait of the temple. According to the appellant,

although by the judgment dated 07.07.2015 of the Honâ??ble Supreme Court, the appellant no longer continues to be the Chairman acting of the

Kamakhya Debutter Board, but nevertheless, he continues to remain a Shebait of the Sri Sri Maa Kamakhya Temple.

12. The appellant took the view that the WP(C) No.6498/2003 was preferred by him for protecting the landed property of the Deity Sri Sri Maa

Kamakhya and not for the purpose of staking a claim to manage the landed properties of the Deity and contended that when there is a question of

illegal and unauthorized alienation of the landed property of the Deity, even a Shebait has the locus-standi to prefer a petition for its protection.

Therefore, in the instant case, although after the judgment dated 07.07.2015 of the Honâ??ble Supreme Court, the appellant no longer continues to be

the Chairman (acting) of the Kamakhya Debutter Board, but he been continuing to be a Shebait of the temple, retains the locus-standi to question any illegal and unauthorized alienation of the landed property of the Deity. The instant writ petition 6498/2003 being a petition seeking a protection of the landed properties of the Deity, the locus-standi of the appellant to maintain the writ petition remains and does not cease to exist after the judgment of the Honâ??ble Supreme Court dated 07.07.2015.

13. In the aforesaid circumstance, the learned Single Judge by the judgment and order dated 19.02.2018 in IA(Civil) No.1252/2016, by taking into consideration the pronouncement of the Honâ??ble Supreme Court in Sree Kalimata Thakurani of Kalighat â??vs- Jibandhan Mukherjee and others, reported in AIR 1962 SC 1329, arrived at a conclusion that Shebaitship is not merely an office, but it falls within the term property and as such, the appellant has the authority to represent the Deity and its properties. The learned Single Judge also accepted the submission of the learned counsel for the appellant that the appellant as a Shebait can maintain the writ petition for protection of the properties of the Deity, but at the same time, also arrived at a conclusion that the said right to file the petition cannot be invoked until and unless it is shown that the Dolois are acting in a manner detrimental to the interest of the property of the Deity. Accordingly, it was concluded that there being no allegation of any mismanagement of the properties of the Deity by the members of the Bordeuri Samaj, it would be fit and appropriate to substitute the appellant by the respondent No.1.

14. The said judgment and order dated 19.02.2018 of the learned Single Judge has been assailed in this writ appeal.

15. Mr. J. Deka, learned counsel for the appellant reiterated his submission made before the learned Single Judge that the appellant by continuing to be a Shebait of the temple, has the locus standi to maintain the writ petition 6498/2003, although he presently may not be the Chairman (acting) of the Kamakhya Debutter Board. It is so in view of the fact that the purport of the WP(C) No.6498/2003 is against the illegal and unauthorized alienation of the landed properties of the Deity and therefore, as held by the Honâ??ble Supreme Court in Sree Kalimata Thakurani of Kalighat (supra) that the Shebait is a human ministrant of the Deity and therefore, it has the locus-standi to bring about a litigation for protecting the landed properties of the

Deity.

16. Mr. M.K. Choudhury, learned senior counsel for the respondent No.1 on the other hand submitted that after the judgment of the Honâ??ble

Supreme Court on 07.07.2015, it is only the Bordeuri Samaj, who can manage the properties of the temple and the respondent No.1 being the elected

Doloi of the Bordeuri Samaj, alone can carry forward the writ petition 6498/2003 and hence, there is a requirement under the law to substitute the

appellant with the respondent No.1 as the petitioner in WP(C) No.6498/2003.

Mr. Choudhury, learned senior counsel also raises an apprehension that if a view, other than the view taken by the learned Single Judge is taken, the

appellant may claim that it would be a recognition of a right in his favour to stake a claim in the management of the properties of the Deity Sri Sri Maa

Kamakhya.

17. Reliance had also been placed by Mr. J. Deka, learned counsel for the appellant on the pronouncement of the Honâ??ble Supreme Court in

Bishwanath and another â?" vs- Sri Thakur Radha Ballabhji and others, reported in AIR 1967 SC 1044, wherein in paragraph-11, it had been held that

an idol is a juristic person in whom the title to the properties of the endowment vests, but it has to act through a human agency and that agent is the

Shebait, who is in law, the person entitled to take proceedings on its behalf.

18. Considered the rival submissions of the parties. The core issue for decision in this appeal would be as to whether the respondent No.1 being the

elected Doloi of the Bordeuri Samaj, who is entrusted with the management of the properties of the Deity Sri Sri Maa Kamakhya as per the judgment

dated 07.07.2015 of the Hon'ble Supreme Court, is required to be substituted as the writ petitioner in WP(C) No.6498/2003 in place of the appellant,

who no longer continues to be the Chairman (acting) of the Kamakhya Debutter Board.

19. Ordinarily, the answer would have been yes, as the appellant may lose his locus-standi to pursue with the writ petition, inasmuch as, after the

judgment of the Honâ??ble Supreme Court dated 07.07.2015, he no longer remains the Chairman (acting) of the Kamakhya Debutter Board and all

the responsibilities and functions, which he had earlier exercised, now vests with the respondent No.1, who is the elected Doloi of the Bordeuri Samaj.

20. But at the same time, it is also an admitted factual situation that although

the appellant may now no longer to be the Chairman (acting) of the Kamakhya Debutter Board, but he also at the same time continues to remain to be a Shebait of Sri Sri Maa Kamakhya Temple. Further, the writ petition 6498/2003, as revealed from paragraph-52 thereof, was filed by the appellant also as a Shebait of the temple. Therefore, under the law, if a Shebait of a temple has the locus-standi to continue with a proceeding on behalf of the Deity, it cannot be said that by merely losing the other status of being the Chairman (acting) of the Kamakhya Debutter Board, the appellant also ceases to have the locus-standi to file the petition as a Shebait.

21. It is also taken note of that even the learned Single Judge in the judgment and order dated 19.02.2018 had accepted the submission that the appellant as a Shebait can maintain the writ petition for protection of the properties of the Deity. But the learned Single Judge at the same time was also of the view that as the management of the properties of the Deity of Sri Sri Maa Kamakhya had been given to the Bordeuri Samaj by the judgment dated 07.07.2015 of the Hon'ble Supreme Court, therefore, unless it is shown that the Dolois are acting in a manner detrimental to the interest of the properties of the Deity, the right to file a petition by a Shebait cannot be invoked.

22. With great respect to the learned Single Judge we differ to the said reasoning inasmuch as, the interlocutory application for substitution was by the respondent No.1 who is the Dolois and not by the appellant who is a Shebait. Had the interlocutory application been preferred by the Shebait for substituting the Dolois, the reasoning that although otherwise the Shebait has the right to file the petition, but he cannot invoke such right until it can be shown that the Dolois are acting in a manner detrimental to the interest of the properties of the Deity, would have been applicable. But here is a case where the Shebait had already preferred the writ petition for protecting the properties of the Deity and it is the Dolois who are seeking to substitute a Shebait. In such situation, a more appropriate consideration would be whether the Shebait continues to have the right to prefer and maintain the writ petition, or such right had ceased to exist when the rights of the Bordeuri Samaj to maintain the properties of the Deity was declared by the Hon'ble Supreme Court in its judgment dated 07.07.2015.

23. The right of a Shebait to maintain a writ petition had been crystallised by the Hon'ble Supreme Court in Sree Kalimata Thakurani of Kalighat

(supra) and Bishwanath and another (supra).

24. In Sree Kalimata Thakurani of Kalighat (supra) in paragraph-16, it had been held that the Shebait is a human ministrant of the Deity and it is not a

mere office, but a property as well. In Bishwanath and another (supra), in paragraph-11, by quoting from the book The Hindu Law of Religious and

Charitable Trust 2nd Edn. by B.K. Mukherjea at Page 249, it had accepted as follows:-

An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has

to act through human agency, and that agent is the Shebait, who is, in law the person entitled to take proceedings on its behalf. The personality of the

idol might therefore be said to be merged in that of the Shebait.

25. From the aforesaid propositions laid down by the Hon'ble Supreme Court, it is clear that the Shebait has the legal right to prefer a petition atleast

for protecting the properties of the Deity, if not, in a given circumstance for managing the properties of the Deity. In the instant case, by the judgment

dated 07.07.2015 of the Hon'ble Supreme Court, the right to manage the properties of the Deity Sri Sri Maa Kamakhya is vested upon the Bordeuri

Samaj and therefore, from the said perspective a Shebait of Sri Sri Maa Kamakhya Temple may not have the right to maintain a petition seeking for

managing the properties of the Deity. But at the same time, in view of the proposition laid down by the Hon'ble Supreme Court in Sree Kalimata

Thakurani of Kalighat (supra) and Bishwanath and another (supra), the right of a Shebait to maintain a petition for protecting the properties of a Deity

continues to remain although by the judgment and order dated 07.07.2015, the further right to maintain a petition seeking for managing the properties

may have been taken away.

26. As already alluded hereinabove, the writ petition 6498/2003 had been preferred by the appellant by virtue of his then status as the Chairman

(acting) of the Kamakhya Debutter Board and also by virtue of his status as a Shebait of the temple. Further the writ petition was preferred for the

purpose of protecting the landed properties of the Deity Sri Sri Maa Kamakhya from being illegally alienated by the district authorities in violation of

the provisions of the Act of 1959 and also for a protection against any further alienation that may be made.

27. By the judgment and order dated 07.07.2015 of the Hon'ble Supreme Court, the status of the appellant as the Chairman (acting) of the Kamakhya

Debutter Board had been taken away, but his other status of being a Shebait of the temple remains unaltered.

28. In this respect reference is made to the provision of paragraph-27 of the Hon'ble Supreme Court in its judgment dated 07.07.2015 in Riju Prasad

Sarma (supra), which is as follows:-

27. Out of the two main reasons given above by the learned Single Judge for not pursuing the issue of locus seriously, the first cannot be questioned.

Once the petitioners gave up their claim of having approached in the capacity of administrators/members of the Board of Trustees, relief of action in

terms Section 25-A of the Act could have been granted for the benefit of the religious institution even on the asking of the petitioners in their capacity

as shebait of the Temple.

29. Accordingly, it would be incorrect to arrive at a conclusion, other than to conclude that the right of the appellant and some other similarly situated

persons to remain as the Shebait of the temple had been accepted by the Hon'ble Supreme Court even in the judgment dated 07.07.2015.

30. As the appellant continues to remain a Shebait and the rights of the Shebait having been crystallized by the pronouncements in Sree Kalimata

Thakurani of Kalighat (supra) and Bishwanath and another (supra), we are of the considered view that the appellant retains his right to maintain the

WP(C) 6498/2003 for the purpose of protecting the landed properties of the Deity Sri Sri Maa Kamakhya from being illegally alienated. It is more so,

from the point of view that by preferring the WP(C) 6498/2003, the appellant merely seeks for protecting the landed properties of the Deity from

being illegally alienated and the writ petition does not disclose any intention that by preferring the same the appellant seeks to gain control over the

management of the properties of the Deity in any manner.

31. 'Substitution of parties' as per Black's Law Dictionary means as follows:-

In pleading, the replacement of one party to an action by another party because of death, incompetency, transfer of interest, or in case of a public

official who is a party to an action, his death or separation from office. Fed.R.Civ.P. 17(a), 25. See also Real party in interest; Revival of action.

32. In any proceeding, a substitution of party is warranted when the legal right

of one of the parties thereto, either to pursue or to be pursued, ceases to exist in course of the proceeding and such right thereupon vests upon another. Any other situation, including a situation where a similar right, either to pursue or to be pursued, do vests on another person during the course of the proceeding, but at the same time, the right of the person who is already impleaded, does not cease to exist, cannot warrant a situation for substitution of parties.

33. Such interpretation would also be in conformity with the meaning of the expression substitution of the parties, as depicted in Black's Law dictionary

because in order to effect a replacement of parties in a proceeding, one of the reasons therefor, would be a transfer of interest from one party to

another. Transfer of interest from one party to another would also entail the ceasure of the right of one person to be vested in another person.

34. In the instant case as already alluded the appellant being also a Shebait of a temple has the right to prefer a petition for protecting the landed

properties of the Deity Sri Sri Maa Kamakhya. The writ petition so preferred being confined to the issue of protecting the landed properties of the

Deity from being illegally alienated and there being no element in the petition seeking to gain control over the management of the properties of the

Deity, such right of the appellant to maintain the writ petition continues even after the judgment dated 07.07.2015 of the Hon'ble Supreme Court

whereby the right to have the control over the management of the properties of the Deity had been taken away from the appellant and had been vested

on the respondent No.1.

35. No doubt, a right to maintain a petition even for protecting the landed properties of the Deity from being illegally alienated would also vest upon the

respondent No.1 after the judgment dated 07.07.2015 of the Hon'ble Supreme Court, but at the same time, as concluded hereinabove, the same right

to maintain a petition for protecting the landed properties of the Deity from being illegally alienated also continues to remain with the appellant.

36. In the circumstance, the judgment and order dated 19.02.2018 of the learned single judge in I.A.(Civil) No.1252/2016 in WP(C) 6498/2003, is

hereby set aside. The I.A.(Civil) No.1252/2016 for substituting the writ petitioner in WP(C) 6498/2003 is partially allowed to the extent that the

respondent No.1 shall stand impleaded as the writ petitioner No.2 WP(C)

6498/2003, while retaining the appellant as the writ petitioner No.1.

37. It is further provided that the retaining of the appellant as the writ petitioner No.1 in WP(C) 6498/2003 and allowing the respondent No.1 to be the

writ petitioner No.2, should under no circumstance be construed to be an order recognizing any right of the appellant for managing the properties of

the Deity Sri Sri Maa Kamakhya and the judgment of the Hon'ble Supreme Court dated 07.07.2015 in Civil Appeals No.3276-3278/2013 (Riju Prasad

Sarma Vs. State of Assam and Others) vesting such right of management upon the respondent No.1 should not be construed to have been diluted in

any manner, and nor any interpretation be given to the said judgment of 07.07.2015 by the appellant or any other person in the manner contrary to

what have been provided therein, by taking recourse to the interpretation of the right of Shebait given in this judgment. In terms of the above, the

appeal stands partly allowed to the extent indicated above.