

Serial No.23
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP. No. 7 of 2023

Date of Order :16.05.2023

Shri. Md. Abdulla SK @
Shri. Abdulla Miah

Vs.

Smti. Jyotsna Bewa.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. A.S.Siddqui, Sr. Adv. with
Ms. A.Kharmudai, Adv.

For the Respondent(s) : Mr. S.Sen, Adv.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER (ORAL)

1. This revision application under Article 227 of the Constitution of India has been preferred against the order dated 28-04-2023, passed by the Assistant to Deputy Commissioner (J), South West Garo Hills, Ampati, in Misc. Application No. 13 of 2023, arising out of Title Suit No. 4 of 1997.

2. The matter in issue in the present revision application concerns the grant of permission dated 30th March, 2023, by the Deputy Commissioner, South West Garo Hills District, Ampati, to the petitioner for holding of a Dargah Fair at the Pirpal Shah Kamal Dargah Shariff, Mahendranj, South West Garo Hills, as per the terms and conditions mentioned therein.

3. The relevant facts needed for consideration of the instant revision application is that this Dargah i.e., Dargah Pirpal Saha Kamal Dargah Shariff, Mahendranj, South West Garo Hills, is presently under litigation in Title Suit No. 4 of 1997, which is pending before the Assistant to Deputy Commissioner, South West Garo Hills, Ampati between the petitioner who is stated to be the Khadim and the respondent.

4. The history of litigation as narrated in the application and also the facts brought on record by the respondent, shows that the right to control as also the title of the Dargah Shariff by the parties herein, has been in serious contention in the pending suit. The dispute mainly as to whether the said property is a Waqf property, has also travelled to this Court in not less than 2 occasions and also before the Hon'ble Supreme Court, wherein successive orders have been passed directing for expeditious disposal of the suit, but which however for reasons unknown, remains at the evidence stage as reported by the parties. It is also relevant to note that a tussle also

exists with regard to the rights of the respective parties to organise and hold the annual Dargah Fair.

5. From the materials placed before this Court, both the petitioner and the respondent have been at pains to show that at certain points of time, permissions have been granted to either of them to conduct the said Dargah Fair in the suit premises. From the side of the petitioner, a perusal of para 6 of the petition reflects that the petitioner had been granted permission to hold the annual Dargah Fair from 2004, consistently till 2022, and it is only on the intervention of the respondent that the learned Court below has prohibited the same till disposal of the suit. The respondent on the other hand, it is submitted, had also conducted the Mela till 2003.

6. The learned Court below, on an application under Section 151 of the CPC in the pending suit filed by the respondent, after issuance of notice to the petitioner herein, then by placing reliance on an interpretation of a judgment and order passed by this Court in WP(C). No. 131 (SH) 2004, annulled the said permission and stayed the same pending disposal of the suit.

7. The only question that is to be decided in the present proceeding in the considered view of this Court is with the legality of the impugned order and as to whether the same was without jurisdiction or illegal, that needs correction by this Court in a proceeding under Article 227 of the

Constitution. In this context, the order dated 30-03-2023, issued by the Deputy Commissioner, South West Garo Hills District, Ampati, is to be examined as to whether the grant of such permission to hold the Dargah Fair has in any manner affected the existing rights of the respondent, or whether by the said permission, the respondent (plaintiff) has been non-suited in the pending suit.

8. Perusal of the permission dated 30-03-2023 shows that certain terms and conditions have been stipulated therein by which the Convenor or organisers was to abide by. It is relevant to note that in Clause 2 of the said permission itself, it has been clearly stipulated that the **“PERMISSION SHOULD NOT BE USED BY THE ORGANIZER(S) TO PRESENT THEIR CLAIMS OVER DISPUTED PROPERTY IN ANY COURT OF LAW.”** The import and purport of the permission therefore, is strictly confined to the holding of the Dargah Fair, and moreover the clause as quoted above, it is to be noted, has consciously been inserted by the Deputy Commissioner being well aware about the pending dispute before the Civil Court.

9. The Civil Court while examining the matter without considering the contents of the permission, however, proceeded in an exercise of re-visiting the entire history of the litigation, which if really gone into, would have surely involved a more thorough discussion as to the existence and

life of the orders that have been passed by the Courts in the earlier proceedings. The order admittedly granting permission, is an order passed in an executive capacity by the Deputy Commissioner, and it is not a proceeding that is emanating from the main Title Suit. No materials have been placed before this Court also to show that this particular fact had been considered by the Civil Court seized with the suit.

10. Though other facts and materials have been placed before this Court at this stage by the respondent, especially in support of her case, this Court for the limited purpose of adjudicating the instant matter and the legality of the order impugned herein, deems it not necessary to enter into the same.

11. The order on examination appears to be without jurisdiction, inasmuch as, apart from allowing the prayer of the respondent, the order effectively negated the order passed by the Deputy Commissioner who was not even a party to the proceedings. Further, the permission as noted earlier is with a caveat that the same cannot be used to make any claim on the disputed property, and has not vested any rights on the petitioner apart from the permission to organise the Dargah Fair. The learned Court below not having taken this aspect into consideration, the impugned order therefore, in the circumstances is without jurisdiction and liable to be interfered with in exercise of powers under Article 227 of the Constitution.

12. In this view of the matter, the impugned order is set aside and considering the fact that the petitioner has been organising the Dargah Fair from 2004 onwards, he is permitted as per the permission dated 30-03-2023, to organise the same so that the sentiments of the devotees who wish to attend this annual Fair, be not hurt due to the rivalry of the parties herein. It is further provided that there shall be a proper maintenance of accounts by the petitioner and 30% of the proceeds of the Dargah Fair shall be deposited with the Court of the Assistant to Deputy Commissioner, South West Garo Hills to be released to whichever party comes out successful in the pending Title Suit.

13. This Court however, notes with concern the fact that the suit has been pending for over 25 years and justice demands that the same be disposed of, which it appears inspite of repeated orders, have not been occasioned. It is therefore directed that the learned Court below shall proceed with the Title Suit on a war footing and the parties are also directed not to cause any further delay or to take unnecessary adjournments or file frivolous petitions. The lower Court shall endeavour to dispose of the suit within six calendar months from the date of this order, inasmuch as, as submitted by the parties the matter is already at the evidence stage.

14. For the reasons aforementioned, and as ordered, this Civil Revision application is allowed and accordingly disposed of.

15. No order as to costs.

Judge

Meghalaya
16.05.2023
"Samantha PS"

