

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 10th October, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.49 of 2017

Petitioners : Sri Guru Singh Sabha and Another

versus

Respondents : The State of Sikkim
through the Secretary,
Ecclesiastical Department and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. A.P.S Ahluwalia, Senior Advocate with Dr. Navin Barik, Mr. S.S Ahluwalia, Mr. Bhagwant Singh Sialka, Mr. Sandip Majumdar, Ms. Esha Acharya and Mr. Partha Pratim Saha, Advocates for the Petitioner No.1.

Mr. Brijinder Singh Loomba, Advocate with Mr. Ajmer Singh Randhawa for the Petitioner No.2.

Mr. Zangpo Sherpa, Additional Advocate General with Ms. Pema Bhutia and Mr. Sujan Sunwar, Assistant Government Advocates for Respondents No.1, 2, 3 and 5.

Ms. Sedenla Bhutia, Legal Officer and Mr. Sonam Palden Tamang, Legal Retainer for Respondent No.1.

Ms. Rita Sharma, Government Advocate and Ms. Norzila Tamang, Legal Officer for Respondent No.5.

Mr. Jorgay Namka, Senior Advocate with Mr. Palden Wangchuk Bhutia, Advocate for Respondent No.4.

JUDGMENT

Meenakshi Madan Rai, J.

1. The discord between the Petitioners and the Respondents arise out of the allegations made by the Petitioners that, on 16-08-2017, the "Guru Granth Sahib Ji" and other articles of the Sikh faith, placed in the Gurudwara, constructed on the periphery of the Gurudongmar Lake in North Sikkim, was desecrated by removal from the place of worship, by the Respondent No.4, in connivance with Respondent Nos.2 and 3, without so much as a notice to the

Petitioner No.1. That, the holy articles were then abandoned sacrilegiously before the Gurudwara at Chungthang, North Sikkim, thereby depriving the Petitioners of their rights to conduct the religious rituals which were imperative preceding such removal. They also allege removal of the "Nishan Sahib" which was flying at the same place, by the same Respondents, causing sacrilege to their place and articles of worship.

2. Invoking the provisions of Article 25 of the Constitution of India and alleging its violation as also of Articles 14, 19(1)(g) and 21 of the Constitution, the Petitioner No.1 in the Writ Petition, *inter alia*, seeks the following reliefs;

- (a) *commanding/directing the Respondent authorities to immediately restore the Holy Guru Granth Sahib Ji, the Nishan Sahib and to fix all internal furniture and other Holy items in the Gurudwara premises at the Gurudongmar Lake as it was prior to 16-08-2017. To further direct the State-Respondents, particularly, the Respondent Nos.1 and 2 to refrain or from doing any acts and conducts to dismantle the structure of the Gurudwara at Gurudongmar Lake and after perusal of the records, causes shown, if any, upon hearing the parties may be pleased to make the Rule absolute and/or pass any order/orders/direction as deemed fit and proper for the ends of justice;*
- (b) *a Writ and/or Order and/or direction in the nature of Mandamus directing the State-Respondents, particularly, the Respondent No.2 to take strict action against the Respondent Nos.3 and 4 both civil and criminal for the illegality and highhandedness committed on 16-08-2017 by removing the Holy Guru Granth Sahib Ji, uprooting the Nishan Sahib, dismantling all internal furniture and removing all other Holy items from the Gurudwara premises at Gurudongmar Lake and placing the same on the road before the Gurudawara at Chungthang, North Sikkim;*
- (c) *a Writ of and/or Order and/or direction in the nature of Certiorari directing the Respondents and each of them to certify and transmit all the records pertaining to the instant case so that conscionable justice be done; and*
- (d) *a Writ and/or Order and/or direction in the nature of prohibition prohibiting the Respondent Nos.1 to 3 and their servants, agents and/or assigns from taking any steps or further steps to dismantle the structure of the Gurudwara at Gurudongmar Lake.*

AND

Further, it is prayed that pending disposal of the Rule the Hon'ble Court may direct the Respondent authorities to refrain from taking any steps or further steps to dismantle the structure of the Gurudwara at Gurudongmar lake and to immediately restore the Holy Guru Granth Sahib Ji, to restore the Nishan Sahib, and fix all internal furnitures and other holy items in Gurudwara premises at Gurudongmar lake as it was prior to 16-08-2017.

3. Consequent upon the filing of the Petition, by the Petitioner No.1 on 24-08-2017, the Single Bench comprising of the then Hon'ble Chief Justice, vide Order dated 13-09-2017, directed all parties to maintain *status quo*, as existing on 30-08-2017. On 13-06-2018, the same Court ordered that the interim order shall continue and on 24-09-2018 a Learned Single Judge further ordered that the interim Order shall continue till the disposal of the Writ Petition.

4. Relevantly, in the interregnum one Amritpal Singh Khalsa was impleaded as Petitioner No.2, in terms of the Order of the Court dated 12-09-2017, by the Bench of the then Hon'ble Chief Justice. On 23-03-2020 however the said Petitioner filed I.A. No.20 of 2020 and sought to withdraw from the proceedings. By an Order of the Learned Single Judge dated 24-03-2020, the name of the Petitioner No.2, as desired by him, was deleted from the array of Petitioners.

5. At this juncture, it is also pertinent to point out that on 08-06-2022 this Court took up for consideration an application, being I.A. No.05 of 2017, filed on 12-09-2017 by one Ajmer Singh Randhawa, who sought to be impleaded as a party in the Writ Petition. He also filed an amended I.A. to the above I.A. on 06-11-2018. The attention of the Court then was invited by Learned Counsel for the Applicant to the Order of the Hon'ble Supreme

Court, in Writ Petition (Civil) No.752/2017, dated 30-08-2017, wherein it was *inter alia* ordered as follows;

"UPON hearing the counsel the Court made the following

O R D E R

Heard the petitioner No.1, who is appearing in-person and Mr. A. Mariarputham, learned senior counsel appearing for the State of Sikkim.

We have been apprised by Mr. Mariarputham that a writ petition is pending before the High Court and is listed for hearing before the High Court on 13th September, 2017. As the matter is pending before the High Court, **we permit the petitioners to get themselves impleaded before the High Court, if so advised.**

....." [emphasis supplied]

I.A. No.05 of 2017 and the amended I.A. were duly heard and considered.

(i) In the I.A. No.05 2017 (*supra*), the prayers put forth by the Petitioner No.2 were as follows;

"It is prayed that pending disposal of the petition

1. *That this Hon'ble Court may be pleased to direct the respondents particularly State of Sikkim to arrange enlightenment of Sri Guru Granth Sahib ji at Gurdwara GuruDongmar so too restoring furnitures/walls/structure, Nishan Sahib be unfurled and erected high at its original place (sic).*
2. *That this Hon'ble Court be pleased to issue ad-interim mandatory prohibitory injunction/order to respondents not to take post haste preceptatory steps so too not to disturb the vinculum juris as this Hon'ble Court is Sessin of the matter (sic).*
3. *That this Hon'ble Court be pleased to issue directions to respondents particularly to State of Sikkim to grant police protection to Gurdwara so that anti-social elements do not steal, damage/ransack or otherwise like may not take the law in their own hands (sic).*
4. *Any other order in the Interest of Justice as this Hon'ble Court may deem fit.*

....."

(ii) By the amended I.A. dated 06-11-2018, the Petitioner No.2 sought to insert the following prayers after Paragraph 3 of I.A. No.5, as extracted hereinbelow;

"3A. That this Hon'ble Court may graciously be pleased to implead and declare the Applicant i.e

Ajmer Singh Randhawa as petitioner in the present Writ Petition.

3B. That this Hon'ble Court be pleased to pass an order directing judicial inquiry under the supervision of this Hon'ble Court in the instant case by the senior judicial officer on the inquiry of the sacrilege of present living Guru of the Sikh religion, Sri Guru Granth Sahib ji, it's illegal removal, packaging, transportation and all other religious articles of the faith removed, abandoned on the road side unattended at Chungthang 100 kms away from Gurudwara Gurudangmar;"

(iii) This Court vide Order dated 08-06-2022 arrayed Ajmer Singh Randhawa as a party in the instant Writ Petition as Petitioner No.2.

6. The Petitioner No.2 then filed I.A. No.23 of 2023 on 31-05-2023, being an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908, read with the Rule 101 of the Sikkim High Court (Practice and Procedure) Rules, 2011, seeking impleadment of the Union of India through the Defence Secretary as Respondent No.6, reasoning therein that the Army was the custodian of the Gurudwara at Gurudongmar Lake, since its construction in 1987. In the same Petition, it was also averred that acts of intervention by the Shiromani Gurdwara Committee is restricted only to the States of Punjab, Himachal Pradesh and Chandigarh and issuance of the letter to the Guru Singh Sabha, Siliguri to conduct the legal battle on its behalf is unconstitutional. That, the letter of authority submitted before this Court is a manipulation of the legal system as the Sri Guru Singh Sabha Committee, Siliguri is not a part of the West Bengal Sikh Gurudwara Board, Kolkata and thereby not a representative of the Sikh Body.

(i) The contents of I.A. No.23 of 2023 are being flagged herein to reflect that although the Petitioner Nos.1 and 2 are aggrieved by the acts of the Respondents, however, they are

themselves in dissonance as apparent from the I.A., where the Petitioner No.2 assails the *locus standi* of the Petitioner No.1 to file the instant Writ Petition.

7. Relevantly, it may be pointed out that on 27-04-2023 the Learned Additional Advocate General appearing for the State-Respondents submitted *inter alia* that, in consultation with the Petitioner No.1 and the Respondent No.4 there was an agreement between the parties to work out modalities for an amicable out of Court settlement for which she sought some time. As the Learned Counsel for the other parties were in agreement to the proposition, time was afforded. However, on the next date fixed, i.e., on 18-08-2023, as no such settlement had been arrived at, the final arguments of the parties were heard.

8. That having been said, Learned Counsel for the Petitioner No.1 while advancing his arguments firstly on the point of *locus standi*, walked this Court through the facts of the case and contended that, the Petitioner being a Sikh Gurudwara at Siliguri, West Bengal, was authorized by the Shiromani Gurudwara Prabandhak Committee, Sri Amritsar Sahib Punjab, the Supreme Sikh Body, to represent the Gurudwaras in Sikkim.

(i) That, history reveals that Guru Nanak Dev Ji had visited Gurudongmar Lake at North Sikkim around the year 1516 and blessed the Lake, in commemoration of which in the mid-1980s a Gurudwara was built near the Lake. The *Holy Guru Granth Sahib Ji* was placed in the said Gurudwara and the *Nishan Sahib* unfurled in the premises. The State Government was well aware of these developments as confirmed by Annexure P1, a communication addressed to the Inspector General of Police (Check

Post), Sikkim Police, by the Under Secretary-II of the Home Department, Government of Sikkim, dated 02-05-2006, permitting two tourists to visit the Gurudwara at the Lake. That, the Notification of the Home Department, Government of Sikkim, dated 24-03-1998 (Annexure R6), note-sheet signed by the Chief Secretary on 15-04-1998 (Annexure R7), and communication of the District Collector, North Sikkim, at Mangan all reveal the existence of the Gurudwara at the spot, even in the year 1998 and that it was well within the knowledge of all concerned.

(ii) Learned Counsel for the Petitioner No.1 relying on all documents on record, contended that, in December, 1997, the Forest Department on inspection of the area submitted a report of the negative repercussions on the environment on account of the construction of the Gurudwara. Following that, on 23-02-1998 the "Sangha" MLA drew the attention of the then Chief Minister to the news article published in a local newspaper, concerning the construction of a Gurudwara near the Lake, while emphasising that the Gurudongmar Lake was essentially a place of Buddhist pilgrimage. The Government in response constituted a Committee on 24-03-1998, comprising of Government officials, to examine the matter. The Committee submitted a report thereto on 11-08-1998, with observations against the construction of the Gurudwara and recommended that the Chief Secretary communicate with the GOC, requesting him to remove all structures at the earliest. The GOC vide letter dated 18-11-1998 addressed to the Chief Secretary of the State agreed to handover the Gurudwara to the State Government, to be utilized as a place of worship for multiple faiths, viz., a "Dharma Sthal". A meeting on 26-09-2000 between the

GOC and the Chief Secretary resolved that the structure would be handed over to the Lachen Monastery under the aegis of the *Lachen Gomchen Rinpoche* and the GOC agreed to ensure that no Unit of the Sikh Regiment would be posted in North Sikkim in future. He also informed that the earlier Sikh Regiment was withdrawn and posted in the Nathu La area. These stand revealed in the notes of the Chief Secretary dated 01-11-2000 (Annexure R22). The Chief Secretary then requested the GOC, 17 Mtn. Div. vide letter dated 16-11-2000, to intimate a suitable date for the Army Authorities to hand over the structure to *Lachen Gomchen Rinpoche*. That, on 12-12-2000 the charge of the "Dharma Sthal" was made over to the said *Rinpoche*. Ninety-nine articles listed in Receipt/Issue and Expense Vouchers in July 2001 were handed over to the "civilians" by the Army, for use in the "Sthal". It is urged by Learned Counsel that the continuity and sanctity of the "Dharma Sthal" was to be maintained by the Lachen Monastery, who unfortunately along with the State-Respondents failed to appreciate the import of the communication of the GOC expressing continuity of the Shrine. Contrarily, a Government Office Order dated 19-08-2003 regularised the services of the Chowkidar-cum-Caretaker for the "Sthal". On 16-08-2017 the articles of the Sikh faith kept inside the structure, including the *Guru Granth Sahib Ji* were desecrated by their removal, depriving the Petitioner of their right to perform the essential religious rituals before such removal and thereby to exercise their rights under Article 25 of the Constitution.

(iii) Stressing on the right guaranteed under Article 25 of the Constitution, it was urged that in ***The Commissioner, Hindu***

Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt¹ it was held that religion is a matter of faith with individuals or communities and the guarantee under our Constitution not only protects the freedom of religious opinion, but also protects acts done in pursuance of a religion, as made clear by the use of the expression "practice of religion", in the provision. That, in **S. P. Mittal vs. Union of India and Others**² the Court while considering Articles 25 to 28 of the Constitution held that, there are other Articles of the Constitution which deal with the right to freedom of religion, which includes the rituals of such religious denomination, which the Petitioners were denied as urged in the foregoing arguments.

(iv) That, the Respondent No.4 has admitted in its communication to the Respondent No.2, that on 16-08-2017 the structure situated at Gurudongmar Tso was dismantled and the items relocated, but the articles were disrespectfully abandoned before the Chungthang Gurudwara sans agreement between the disputing parties for dismantling the structure, indicating the complicity of the State with Respondent No.4, That, the Petitioner No.1 had the right to acquire and administer property for their religious purposes. Relying on **Ram Rattan and Others vs. State of Uttar Pradesh**³ it was canvassed that the Respondent No.4 by their act have illegally dispossessed the Petitioner from the "Dharma Sthal", when it is settled law that a true owner has every right to dispossess or throw out a trespasser while the trespasser is in the act or process of trespassing, but this right is not available to the true owner if the trespasser has been successful in accomplishing

¹ AIR 1954 SC 282

² AIR 1983 SC 1

³ (1977) 1 SCC 188

his possession, to the knowledge of the true owner. That, the Supreme Court in **Meghmala and Others vs. G. Narasimha Reddy and Others**⁴ observed that, even a trespasser cannot be evicted forcibly by the State by an Executive Order. Garnering succour from **ABL International Ltd. and Another vs. Export Credit Guarantee Corporation of India and Others**⁵ it was urged that the High Court has the jurisdiction to determine disputed questions of fact and the Court will not be justified in requiring the party to seek relief by way of a civil suit against a public body which could be a lengthy and expensive process. Drawing strength from **Suresh Chand Gautam vs. State of Uttar Pradesh and Others**⁶, it was next contended that the observation of the Supreme Court therein was that the public authority has to exercise its powers with responsibility, thereby making it incumbent upon the State-Respondents to have issued notice to the Petitioner before the above acts. That, in light of the arguments advanced the Petitioner No.1 is entitled to the reliefs claimed, which this Court is competent to grant.

9. The Petitioner No.2 went unrepresented on the two days of the final hearing as neither the Petitioner No.2 nor his Counsel were present in the Court. However, the Learned Counsel had filed a "synopsis of arguments" dated 04-09-2023, which was taken on record. The attention of this Court in the synopsis was invited to Articles 14, 21 and 25 of the Constitution of India. It was contended that the action of Respondent Nos.2 and 3 indicated the involvement of the State and violation of the basic features of the Constitution by their arbitrary acts. While relying on **His Holiness Kesavananda Bharati Sripadagalvaru and Others vs. State of Kerala and**

⁴ (2010) 8 SCC 383

⁵ (2004) 3 SCC 553

⁶ (2016) 11 SCC 113

Another⁷ case, the Petitioner No.2 sought to emphasise on the meaning of 'State' under Article 12 of the Constitution, the term "local authority", "local Government", "village panchayat". The powers under Article 226(1) and Article 226(2) of the Constitution were also highlighted. That, orders be passed in terms of the prayers in I.A. No.22 of 2023.

10. The State-Respondents No.1, 2, 3 and 5 through the Learned Additional Advocate General canvassed that, in the first instance the question of maintainability of the Writ Petition is to be examined as the Petitioner No.2 is contesting the *locus standi* of the Petitioner No.1. Repudiating the contention that the Gurudwara was built in 1987, Learned Additional Advocate General while referring to the marble plaque, in Annexure P1 (photograph) urged that it was evidently constructed only in the year 1997. Prior thereto, a small Buddhist structure (Lhakang) existed to shield the butter lamp and incense offered as a form of worship to the Holy Lake. As the Army was vested with powers to issue permits for visits to restricted areas in the State, including Gurudongmar Lake, the State Authorities remained oblivious to the construction of the disputed structure till December, 1997, when officers of the Forest Department duly permitted by the Army, surveyed the wildlife in the area and found the "Gurudwara Sahib" constructed and inaugurated by one Maj. Gen. P.P.S. Bindra. The Forest contingent expressed their apprehension of the negative impact on wildlife in the region due to easy accessibility of the area and heightened presence of non-native people, hence the Area MLA Namkha Gyaltsen took up the matter vide communication dated 23-02-1998 with the then Chief Minister. That, the Nodal Officer,

⁷ AIR 1973 SC 1461

Forest (Conservation) Act, 1980, Government of Sikkim, also brought the situation to the notice of the GOC 17 Mtn. Div. HQ., vide his communication dated 24-02-1998. He apprised the GOC that the entire surrounding area and Gurudongmar Lake itself stood recorded as "Reserve Forest Land" and was thereby under the administrative control of the Forest Department of the State Government. That, non-forestry activity as per the Forest (Conservation) Act, 1980, requires the prior formal approval from the Ministry of Environment and Forests, Government of India. Neither the 'Lhakhang' nor the Gurudwara had sought permission for utilizing the area for non-forest purposes nor was the Government informed, thus warranting legal action against the offenders.

(i) That, the Chief Secretary, as per his note dated 09-03-1998 (Annexure R5), reveals that on his visit to Gurudongmar area, he found the construction of a Gurudwara, which the GOC of the 17 Mountain Division and his officers promised to remove. Relying on ***Shri Sohan Lal vs. Union of India and Another***⁸ Learned Counsel urged that consequently these aspects are to be considered and the title to the land is to be determined. That, the Lake is worshipped and bathing is prohibited in all lakes in Sikkim, but the Army had desecrated it by permitting bathing therein, thus with a view to restore the area to its original pristine character, vide Notification dated 24-03-1998 a Committee was constituted comprising of the Finance Secretary; Secretary, Ecclesiastical Affairs Department; Secretary, Land Revenue Department; District Collector, North District and two representatives of the Forest

⁸ AIR 1957 SC 529

Department to examine the matter and a Report was duly submitted on 11-08-1998.

(ii) That, it is an erroneous submission of the Petitioner No.1 that locals had removed the *Holy Guru Granth Sahib Ji* as the office notes of the Chief Secretary dated 15-04-1998 at Annexure R7, indicate that on 13-04-1998 the GOC had called on the Chief Secretary, who informed him that constructing the Gurudwara was not only inappropriate but in violation of the law. According to the GOC then, as the Sikh troops were being shifted, the *Holy Guru Granth Sahib Ji* which was in the Gurudwara would be taken along. Hence, the allegation that the *Holy Book* was desecrated is falsified. The GOC as undertaken downsized the structure after three to four months' (Annexure R7) while the main structure continued to stand.

(iii) The Receipt/Issue and Expense Vouchers of articles handed over by 17 Mtn. Div., to the civilians, is witness to the fact that the Holy Book was never handed over to the Lachen Monastery in 2001, and was never at the "Sthal" on the alleged date of desecration, i.e., 16-08-2017. That, Serial No.61 of the Receipt *supra* reveals that a 30 foot *Nishan Sahib Pole* was made over to the "civilians", consequently the argument that it was also disrespectfully uprooted by the Respondents are erroneous and misleading. The notes of the Chief Secretary, dated 15-04-1998, Annexure R7, along with the Receipt/Issue and Expense Vouchers dated July, 2001, in this context assumes importance.

(iv) That, on 11-08-1998 the Secretary, Finance, as Member of the Committee (*supra*) had also recommended that the Chief Secretary request the GOC to remove all structures. That,

the Chief Secretary, in his note dated 28-04-1999 (Annexure R16), was in agreement that the Gurudwara was constructed in violation of the relevant laws while the Joint Secretary-II, Home, on 02-06-1999 had suggested that either legal proceedings for violations of laws be initiated against the Army or resolved with the GOC. The allegation of lack of notice to Army authorities does not arise as the letter of the Chief Secretary dated 16-11-2000, was in response to his letter dated 18-11-1998 and suffices as notice to the GOC, who consequently offered to hand over the structure to the State. It was next contended that the Lachen Monastery is a necessary party being the recipient of the articles as discussed already and in their absence the Petition deserves a dismissal, towards which the attention of this Court was drawn to ***Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar and Another***⁹. It was canvassed by Learned Additional Advocate General that the entire gamut of the facts and circumstances unequivocally reveal disputed questions of fact in the matter, which include the question of the legal competence of the Petitioner No.1. This submission was fortified by relying on ***Arya Vyasa Sabha and Others vs. The Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad and Others***¹⁰. The ownership of the land on which the 'Lhakhang' and the Gurudwara were constructed along with other facts raised hereinabove requires determination by a Court of appropriate jurisdiction, hence the Writ Petition deserves a dismissal.

11. Learned Counsel for the Respondent No.4 drew the attention of this Court to Paragraphs 1 to 23 and 25 of the Writ

⁹ AIR 1963 SC 786

¹⁰ (1976) 1 SCC 292

Petition and contended that in the first instance the Petitioners have not indicated by their averments the existence of a Gurudwara. Endorsing the submissions advanced by the Learned Additional Advocate General, it was contended that the inventory was prepared and articles handed over to the Lachen Monastery in terms of the Receipt, dated 06-07-2001. That, in such circumstances it is incomprehensible as to how the holy articles can again be subsequently removed on 16-08-2017 from the Gurudwara. The alleged desecration of the religious articles is a figment of the imagination of the Petitioner No.1. That, in fact on 16-08-2017 the Respondent No.4 had communicated to the District Collector, North at Mangan, that the Lachen Monk Committee in consultation with the Lachen public had unanimously decided to dismantle their 'Lhakhang' at Gurudongmar Tso and relocate the religious items to another location, the same day. The necessary prayers before such dismantling were conducted. This shifting was in order to facilitate the development works of the Sikkim Government at the same location. Thus, it was not the articles of the Petitioner No.1 that were removed but that of the 'Lhakhang' itself, as the Sikh articles of faith had been handed over in July, 2001. There is no proof whatsoever to establish that the articles outside the Chungthang Gurudwara were deposited by the Respondent No.4. That, in actuality the representatives of the Gurudwara had requested the Respondent No.4 to place the articles which were outside the Gurudwara inside the 'Lhakhang' at the Lake, as evident from the counter-affidavit of the Respondent No.4. That, the question of *Guru Rinpoche* and *Guru Nanak Dev Ji* being one and the same entity is belied by the fact that *Guru*

Rinpoche visited the area around 8th century and *Guru Nanak Dev Ji* around the year 1516. To buttress his submissions, Learned Counsel relied on ***Dr. M. Ismail Faruqui and Others vs. Union of India and Others***¹¹, wherein it was observed that the constitutional scheme guarantees equality in matters of religion to all individuals and groups irrespective of their faith, emphasizing that there is no religion of the State itself. It was urged that the Lake was defiled by baths permitted in it by the Army. In view of the disputed questions of fact, including the religious history of the area which needs to be clarified, the matter cannot be considered by a Writ Court, and the Petition thereby deserves a dismissal.

12. Both the State-Respondents and the Respondent No.4 also drew the attention of this Court to I.A. No.23 of 2023 and contended that the *locus standi* of the Petitioner No.1 ought to be resolved before determination of other issues.

13. The rival contentions of Learned Counsel for the parties were heard *in extenso*, the averments in the affidavits exchanged duly perused, as also the documents relied on by all the parties.

14. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue prerogative writs for enforcement of fundamental rights or for any other purpose and the jurisdiction is discretionary and equitable. However, a writ proceeding cannot be a substitute for a Civil Suit, the jurisdiction of the Civil Court having wide amplitude.

(i) That having been said, it is apparent that the land on which the 'Lhakhang' was situated and where the alleged Gurudwara was later constructed is claimed to be Forest land by the State-Respondents. 'Forest' comes under List III of the

¹¹ (1994) 6 SCC 360

Seventh Schedule to the Constitution, which is the Concurrent List. As can be culled out from the averments and submissions advanced before this Court, neither the Petitioners nor Respondent No.4 have established acquisition of the land or contended that they sought permission from the Forest Department to utilize the land for construction of structures for offering worship, which is a non-forestry purpose.

(ii) The Petitioner No.1 alleges that the *Guru Granth Sahib Ji* was removed without the requisite preceding religious rituals having been conducted and that the removal was the handiwork of Respondent No.4, in connivance with the State-Respondents. The State-Respondents and the Respondent No.4 dispute this allegation and point to the Receipt/Issue and Expense Vouchers of July, 2001, which according to them, find no mentions of the Holy Book. The Respondent No.4 specifically agitates that the *Nishan Sahib Pole* was already uprooted by the concerned Army stationed there while placing reliance on the letter of the GOC dated 18-11-1998 and thereafter handed over vide the Receipt/Issue and Expense Voucher of July, 2001. That Army, according to Respondent No.4, handed over all religious articles from the Gurudwara to the Lachen Monastery under the aegis of the *Lachen Gomchen Rinpoche*. The parties vehemently controvert each other regarding the alleged sacrilegious removal of articles of faith, abandoned before the Gurudwara at Chungthang. While the Respondent No.4 alleges that the Gurudwara at Chungthang had requested that the articles be placed in Lachen Monastery, which was not agreeable to the Respondent No.4 and hence, the articles remained outside the Chungthang Gurudwara, which however were not placed by

Respondent No.4 at the said spot. The Petitioner No.1’s case is that structure constructed by the Army was to be used as “Dharma Sthal”, i.e., a place of worship for all faiths, the Respondent No.4 repudiating this allegation contends that the place is one of Buddhist worship. The parties agree that Government Forest officials visited the area in 1997 and found that the construction of religious Shrine in the area would affect the environment and fauna of the area.

(iii) Pausing here momentarily, in **T. N. Godavarman Thirumulpad, In Re vs. Union of India and Others**¹² the Supreme Court while considering the meaning of the word ‘forest’ and the permission for use of forest land for the non-forest purposes observed as follows;

“36.

5. We further direct as under—

I. GENERAL

1. In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance with Section 2 of the Act, all ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of sawmills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and, are therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest (Conservation) Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

.....”

That, no permission was sought for by the Petitioner No.1 and Respondent No.4 nor granted by concerned State-Respondent is an admitted position in the matter at hand. The observation of

¹² (2022) 4 SCC 289

the Supreme Court (*supra*) thus attains importance on this aspect and cannot be flouted by any person/authority.

(iv) In ***Narinder Singh and Others vs. Divesh Bhutani and Others***¹³ the Supreme Court held as follows;

"25. While interpreting the laws relating to forests, the Courts will be guided by the following considerations:

- i. Under clause (a) Article 48A forming a part of Chapter IV containing the Directive Principles of State Policy, it is the obligation of the State to protect and improve the environment and to safeguard the forests;
- ii. Under clause (g) of Article 51A of the Constitution, it is a fundamental duty of every citizen to protect and preserve the natural environment, including forests, rivers, lakes and wildlife etc.;
- iii. Article 21 of the Constitution confers a fundamental right on the individuals to live in a pollution-free environment. Forests are, in a sense, lungs which generate oxygen for the survival of human beings. The forests play a very important role in our ecosystem to prevent pollution. The presence of forests is necessary for enabling the citizens to enjoy their right to live in a pollution-free environment;
- iv. It is well settled that the Public Trust Doctrine is a part of our jurisprudence. Under the said doctrine, the State is a trustee of natural resources, such as sea shores, running waters, forests etc. The public at large is the beneficiary of these natural resources. The State being a trustee of natural resources is under a legal duty to protect the natural resources. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gains;
- v. Precautionary principle has been accepted as a part of the law of the land. A conjoint reading of Articles 21, 48A and 51-A(g) of the Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests. The precautionary principle requires the Government to anticipate, prevent and remedy or eradicate the causes of environmental degradation including to act sternly against the violators;

....."

¹³ 2022 SCC OnLine SC 899

The observations (*supra*) *inter alia* provides an insight into the fundamental right of individuals to live in pollution free environment, while rendering the State responsible for protecting, improving and safeguarding forests. The term 'environment' would bring within its ambit the flora and fauna of a particular area of any State/region.

(v) While referring to the observation made in ***Hindu Religious Endowments*** (*supra*) relied on by the Petitioner No.1 indeed this Court is in agreement that there is no dispute as to the rights vested on a religious denomination to acquire, own and administer their own property. The only question that needs to be mulled over is whether Article 25 of the Constitution can be invoked on the edifice of illegality, when admittedly the averments, arguments and documents on record are devoid of any evidence that permission was ever sought by any of the contesting parties, to set up their respective places of worship at the Lake's periphery, in other words to utilize forest land for non-forest purposes.

(vi) Learned Counsel for the Petitioner No.1 while inviting the attention of this Court in ***S. P. Mittal*** (*supra*) sought to emphasise that the Constitution guarantees Right to Freedom of Religion. Indeed this is elementary. This Court is conscious of the constitutional provisions of Part III under the Right to Freedom of Religion. What cannot be lost sight of is the fact that Article 25(1) of the Constitution guarantees to all persons, subject to public order, morality and health and to the other provisions of Part III of the Constitution, freedom of conscience and the right to profess, practice and propagate religion. This Court is also aware that freedom to practice and profess religion includes the freedom to

practice, rituals and ceremonies which are an integral part of a religion. In **S. P. Mittal** (*ibid*) the Supreme Court has observed specifically as follows;

"4. Freedom of conscience is not to be separated from the Right to profess, practice and propagate religion. They go together and together they form part of the Right to Freedom of Religion. **Clause (2) of Art. 25, however, stipulates that the freedom and the right guaranteed by Cl. (1) shall not prevent the State from making any law regulating or restricting, any economic, financial, political or other secular activity which may be associated with religious practice,**" [emphasis supplied]

Thus, it follows that Article 25 of the Constitution allows the State adequate legroom to rein in the circumstances which are not compliant with the constitutional provision. The right of the State to impose such restrictions as are desired or found necessary, for the purposes of public order, health and morality is inbuilt in Articles 25 and 26 of the Constitution.

(vii) Learned Counsel for the Petitioner No.1 had also fortified his submission by relying on **Suresh Chand Gautam** (*supra*) emphasizing on the point that every public authority has a duty coupled with power before exercising that power. In the said Judgment reference was made to the decision of the Supreme Court in **Aneesh D. Lawande and Others vs. State of Goa and Others**¹⁴ wherein the Supreme Court held that;

"25. Reliance has also been placed by the learned counsel on the decision in **Aneesh D. Lawande v. State of Goa**, where the Court has referred to the authority in **Julius** [Julius v. Lord Bishop of Oxford : (1990) LR 5 AC 214 : (1874-80) All ER Rep 43(HL)] and observed (SCC p.566, para 25) that every public authority who has a duty coupled with power, before exercising the power, is required to understand the object of such power and the conditions in which the same is to be exercised. The learned counsel for the petitioners emphasizing on the conception of "power coupled with duty" has referred to a series of judgments. We have already referred to some and we think it appropriate to refer to some."

¹⁴ (2014) 1 SCC 554

In my considered opinion, this does not assist the case of the Petitioner No.1, who, by relying on the citation seeks to insinuate that the State-Respondents were complicit in the alleged removal of the holy articles. Reliance on the above ratiocination at this juncture serves no purpose for the reason that the role of the State-Respondents is asserted by the Petitioner No.1 and denied by the State-Respondents and therefore a disputed question of fact.

(viii) The Petitioner also sought to garner his submissions with reliance on **ABL International Ltd.** (*supra*) wherein the Supreme Court referred to the decision of **Gunwant Kaur and Others** vs. **Municipal Committee, Bhatinda and Others**¹⁵, in which it was *inter alia* held that the High Court has the jurisdiction to determine questions of fact even if they are in dispute. In my considered opinion, the facts and circumstances in the instant Writ Petition are completely distinguishable from the above cited matter. The Petition at hand raises complicated questions of fact for appropriate and just determination, for which oral evidence is imperative and all parties are to be afforded an opportunity for such an exercise.

(ix) The Supreme Court in **Sohan Lal** (*supra*) (relied on by the State-Respondents), the Respondent therein filed a Petition under Article 226 of the Constitution wherein the High Court ordered the Union of India to forthwith restore possession of a house situated in West Patel Nagar, New Delhi, to the Respondent who was a Petitioner. The Supreme Court opined that;

“(5) We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are

¹⁵ (1969) 3 SCC 769

in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.” [emphasis supplied]

Similarly, in the instant Writ Petition, in my considered opinion, the claims of title to the property on which the structures were constructed requires to be given a quietus before the Petitioners and the Respondents raise other issues for determination, such declaration cannot be made by this Court.

(x) In *Arya Vyasa Sabha* (*supra*) relied on by Learned Additional Advocate General, the Appellants therein were societies and associations registered under the Registration of Societies Act (21 of 1860), they were maintaining various institutions pursuant to the objects set out in their Memorandum of Association. The concerned department of the State required them to be registered under Section 38 of the Act *supra*. The Appellant filed a Writ Petition in the High Court of Andhra Pradesh, challenging the validity of the notices issued by the department, on grounds that, certain Sections of the Act were violative of Articles 14, 19(1)(f), 25, 26 and 31 of the Constitution. The High Court did not decide the question as to whether the Petitioner Arya Vyasa is or is not a religious denomination or any section thereof within the meaning of Article 26 of the Constitution. The High Court also left other questions which were formulated, undetermined as it felt that they were disputed questions of fact and could not be appropriately determined in proceedings under Article 226 of the Constitution. The instant dispute is in a similar situation.

(xi) The State-Respondents argued that the Petition deserves a dismissal as the Lachen Monastery who is a necessary party was not arrayed as such in the proceedings, towards which reliance was placed on **Udit Narain Singh Malpaharia** (*supra*) wherein while referring to “The Law of Extra-ordinary Legal Remedies” by Ferris, with regard to the procedure in the matter of impleading parties, it was held;

“(11)

“Those parties whose action is to be reviewed and who are interested therein and affected thereby, and in whose possession the record of such action remains, are not only proper, but necessary parties. It is to such parties that notice to show cause against the issuance of the writ must be given, and they are the only parties who may make return, or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control, goes to the very right of the relief sought. But in order that the court may do ample and complete justice, and render a judgment which will be binding on all persons concerned, all persons who are parties to the record, or who are interested in maintaining the regularity of the proceedings of which a review is sought, should be made parties respondent.”

.....”

(xii) Having considered this submission, I am not inclined to delve into the impleadment of parties as the Lachen Dzumsa is already a party to the instant proceedings and it is for them to sort out the intricacies and complexities of whether they are also responsible for the Monastery or whether the Monastery is an independent entity. These are again questions of fact not determinable by this Court.

(xiii) It is clear herein that amongst others, the title of the land is undetermined, the *locus standi* of the Petitioner No.1 is in dispute, the dismantling and removal of the articles on 16-08-2017 are in dispute, the articles alleged to have been handed and taken over by the Army to the civilians, respectively, is disputed. The method of removal of the articles is in dispute. The entity of the

religious personalities is in dispute. It requires no reiteration that disputed questions of fact cannot be determined in proceedings under Article 226 of the Constitution.

15. In light of the foregoing discussions, it emanates that where the determination of the constitutional question depends upon the investigation of complicated questions of fact or of taking evidence, the High Court may dismiss the application under Article 226 of the Constitution. The issues placed before this Court as put forth in the foregoing Paragraphs require extensive evidence, which falls within the ambit and powers of a Civil Court.

16. Consequently, I am constrained for the aforementioned reasons to dismiss the Writ Petition.

17. Pending applications, if any, stand also disposed of.

18. Parties to bear their own costs.

(Meenakshi Madan Rai)
Judge

10-10-2023

Approved for reporting : **Yes**