

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

WA No. 11/2023

SRI GURU SINGH SABHA

APPELLANT (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

For Appellant : Dr. Navin Barik, Mr. Sandip Majumder, and Ms. Rachna Rai, Advocates.

For Respondents No. 1, 2, 3 and 5 : Mr. Zangpo Sherpa, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate and Mr. Sujan Sunwar, Assistant Government Advocate

For Respondent No.4 : Mr. Jorgay Namka, Senior Advocate with Mr. Hissey Gyaltsen and Mr. Avinash Dewan, Advocates.

For Respondent No.6 : None.

Date: 01/12/2023

CORAM:

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

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ORDER : (per the Hon'ble, the Chief Justice)

This appeal arises in respect of a judgment and order dated 10th October, 2023, passed by a learned Single Judge in WP(C) No.49 of 2017 (*Sri Guru Singh Sabha and Another vs. The State of Sikkim and Others*). By the impugned judgment and order, the learned Single Judge proceeded to dispose of the writ petition filed by Sri Guru Singh Sabha in the following manner:-

“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.”

The present appeal has been preferred by the original writ petitioner, being Sri Guru Singh Sabha, a society registered under West Bengal Societies

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Registration Act, 1961. The facts of the case are briefly stated in paragraph 1 of the impugned judgment, which is reproduced hereinbelow:

"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."

The reliefs which the petitioner claimed before the writ Court are set out hereinbelow:-

"(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."

It appears that all parties were given adequate opportunity of hearing by the learned Single Judge and the issue raised before the writ Court was dealt

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with by the learned Single Judge at length. The learned Single Judge, after considering the matter in its entirety was of the view that there were several questions of fact which could not be determined by the writ Court. The learned Single Judge, while dismissing the writ petition, made it clear that the issues placed before the writ Court require extensive evidence, which falls within the ambit and powers of the Civil Court.

It is, thus, patently evident that the rights of the parties have not been determined in any manner by the writ Court while proceeding to dismiss the writ petition.

In an Intra-Court mandamus appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts of the instant case, on a plain reading of the impugned judgment and order, we do not notice any such palpable infirmity or perversity. We are, therefore, of the view that the impugned judgment and order does not warrant any interference.

We dispose of the appeal by granting liberty to the appellant to approach the competent Civil Court — if so advised — for adjudication of its rights strictly in accordance with law. All points raised before the writ Court are kept open to be determined by the competent Civil Court.

Parties who may be interested to seek impleadment, in the event the Civil Suit is initiated by the appellant before the competent Civil Court, are at liberty to apply before that Court.

The present Appeal, being Writ Appeal No.11/2023, stands disposed of accordingly.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice