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Court : Kolkata

Decided On : Aug-31-1960

Reported in : 1961CriLJ466

Judge : Niyogi, J.

Appellant : Balendra Deb Roy and ors.

Respondent : Manabendra Deb Roy and ors.

Judgement :

Niyogi, J.

1. This Revision petition is against an order of a learned magistrate, first class, Chinsurah, passed in a proceeding under Section 145 of the Code of Criminal Procedure,

2. It appears that the first-party, opposite party, Sri Manabendu Deeb Roy filed a petition under Section 144 of the Code of Criminal Procedure, before the Sub-divisional magistrate Chinsurah on 11-4-59 praying that the petitioners second-parties might be directed to abstain from using criminal force and violence against the first party - in holding the Seba Puja of the deity Sri Sri Hangseswari Thakurani and other deities at Bansberia, P. S. Mogra, from 1st of Baisakh 1366 B. S. till the last day of Sravan, 1366 B.S. The learned Sub-divisional Magistrate then asked the officer-in-charge of the Mogra Police station to inquire and report. The Police

duly submitted a report and on 29-4-59, on a consideration of the same, the learned magistrate was satisfied about the existence of an apprehension of breach of the peace over a dispute between the parties relating to their respective rights over the temple in question and drew up a proceeding under Section 145 of the Code of Criminal Procedure against the parties and directed them to appear in his court and put in written statement of their respective claims. The learned Magistrate also passed a further order attaching the temple in question as a measure of emergency and appointed One Sri Anil Chatterji of the Hangseswari Road, Bansberia, to be the care-taker of the temple of the deity and to perform the regular Puja of the deity until further orders. This Rule has been obtained against the order of the learned magistrate passed in that proceeding on 9-9-59, on a Perusal of the written statements, documents and affidavits filed by the parties before him. The learned Magistrate was satisfied therefrom that the 'first party representing the eldest group of the Barataraf of the Sebaitis was entitled to take over the administration of the temple for the purpose of Seba Puja of the deity on the 1st of Baisakh, 1366 B.S. and to continue to hold charge of the temple and possess its precincts exclusively for all practical purposes till the last day of Sravan, 1366 B. S.' He, however, next observed as follows:

The term of the first party is now over. It is, therefore, enough to keep on record that he was entitled to the exclusive possession of the temple and its precincts during the period in question. Such possession ought not to have been interfered with. The first-party shall bear all costs of Pujas performed during this period 1st Baisakh, 1366 B.S. to the last day of Srawan. 1366 B. S., He will reimburse the Pujari.... I make no order as to costs.

3. The first-party Sri Manabendu Deb Roy Mahasay of Bansberia claims the Debattar in question to be a public Debattar. The three branches of the sebaitis of the deity Sri Sri Hangseswati, are respectively known as Barataraf, Mejotaraf and Chhototaraf. The first-party as well as the petitioners, second parties Nos. 1 to 5, all belong to the Barataraf. It was stated by the first-party that by an amicable arrangement between the co-sebaitis, they divided the Palas for the seba-puja of the deity Sri Sri Hangseswari Thakurani amongst the different branches of the sebaitis, and in accordance with such arrangement, the seba-puja of the deity for

the first four months of 1366 B.S., namely, from the month of Baisakh to Sraban 1366, was to be performed by the first party. It was further stated that the second-party were threatening the first-party with force and violence in case the first-party so exercised the right of seba-puja on 1st of Baisakh, 1366 B.S.

4. The above allegations were denied by the second parties Nos. 1 to 5 in the written statement jointly filed by them and they claimed the right to perform the puja of the deity in the year 1366 B.S. and set up a different arrangement for the seba-puja of the deity amongst the co-sebaiters.

5. It has been contended on behalf of the petitioners that the alleged dispute between the parties was concerning the right of worship of the deity Sri Sri Hangseswari Thakurani in the temple during a particular Pala and in the facts and circumstances, there could be no proceeding under Section 145 of the Code of Criminal Procedure and the learned Magistrate's order passed in the said proceeding was, therefore, thoroughly misconceived.

6. Right of worship claimed during a particular Pala can only be exercised in a sporadic manner and not continuously. It was urged that at the time the learned Magistrate passed the impugned order, the Pala period claimed by the first-party, had already been over and there thus being no longer any apprehension of the breach of the peace in existence, the learned Magistrate should have cancelled the proceeding and should not have proceeded to pass an order in the manner he did. It was also pointed out that the learned Magistrate came to his said finding without discussion of the documents and other evidence produced before him by the respective parties.

7. I think that the contention of the petitioners-second parties about the non-applicability of Section 145 of the Code of Criminal Procedure in this case must be sustained. It was decided by a Full Bench of this Court in *Dhirendra Nath Das v. Hrishikesh Mukherji* : AIR1951 Cal93 that a dispute as to the right of worship in a temple or over the places of worship necessarily involved a dispute as to the right of user of the land within the meaning of Section 147 of the Code of Criminal Procedure. The petitioner in that case also claimed to be a sebait of the deity and according to him, the deity was a family deity. The opposite-parties, who were

religious minded Hindus of the district, contended that the deity was a public deity and that the temple in which the deity was housed and the adjoining lands formed a public Debattar. The learned Sub-divisional Magistrate, after a consideration of the police report and other materials before him, drew up a proceeding under Section 147 of the Code of Criminal Procedure. The petitioner moved the Sessions Judge of Hooghly under Section 438 of the Code of Criminal Procedure with a view to having the proceeding quashed and was unsuccessful. Thereupon, this Court was moved by the petitioner in this behalf and it was contended before this Court that as the dispute concerned merely the right of worship it could not possibly be said to be a dispute relating to the user of the land and, therefore, it could not fall within the purview of Section 147 of the Code of Criminal Procedure. That was the view previously held by this Court in a number of cases. On the other hand, a very considerable body of authorities from other Courts supported the view that a dispute as to the right of worship in a particular temple was a dispute relating to the user of land and, therefore, did fall within the provisions of Section 147 of the Code of Criminal Procedure.

8. The matter was ultimately referred to the Full Bench by a Bench of this Court as the said Bench were inclined to doubt the correctness of the authorities of this Court and were inclined to take the almost unanimous view of the other Courts that a dispute as to the right of worship was a dispute relating to the user of the land and of the place of worship in question.

9. The judgment of the Full Bench was delivered by Harris, C.J. and Banerji and Das Gupta, JJ. agreed with the view taken by him, Harris, C.J. observed at page 94 as follows:

A dispute as to worship however, might be a dispute as to worship of the deity in a particular temple or place. It appears to me that if such be the dispute, then the dispute as to the worship necessarily involves a dispute as to user of land or building in which a particular deity is located'. In another place at page 96 he observed: The view expressed in the earlier cases of this Court cannot be maintained and in my judgment they should be over-ruled. In these cases the Benches concerned failed to appreciate that a right to worship in a particular place

must involve a right to use that particular place for a particular purpose or in a particular manner. To deny the right to worship in a particular place is to deny the right to use that place in a particular manner.... The right to worship, as I have said cannot be regarded as something entirely apart from the place of worship if what has to be considered is the right to worship a deity in a particular building or place. The view of the other High Courts must, I think, be accepted and that being so, it must be held that a dispute as to the right to worship a deity in a particular temple, is a dispute falling within the ambit of Section 147 of the Code of Criminal Procedure.

The Full Bench, therefore, dismissed the petition for quashing the proceeding and the Rule was discharged.

10. In view of the above Full Bench decision, the order of the learned Magistrate drawing up proceeding under Section 145 of the Code of Criminal Procedure and the subsequent order dated 9-9-59 passed by him, were thoroughly misconceived.

11. Accordingly, the order complained of must be set aside, and the Rule is made absolute.