



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.

@ SLP(CRL) NOS.13258-13259/2024

SHRI KHERESHWAR MAHADEV VA DAUJI MAHARAJ
SAMITI, ALIGARH

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. The appeals are taken up for hearing.
3. Heard Shri Gagan Gupta, learned senior counsel appearing for the appellant(s) and Shri Atul Parmar, learned counsel appearing on behalf of the respondent(s).
4. These appeals challenge the order dated 30th May, 2023 passed by the Division Bench of the Allahabad High Court in Criminal Misc. Writ Petition No.5140 of 2023 and the order dated 10th May, 2024 passed by the Division Bench of the Allahabad High Court in Criminal Misc. Recall Application No.5 of 2023.

5. It further appears that the appellant is managing the affairs of the appellant-temple known as Shri Khereshwar Mahadev Va Dauji Maharaj Samiti, Aligarh.

6. It appears that there is a dispute with regard to the management of the said temple with various committees urging for control. With regard to the said dispute Original Suit No.623 of 2012 was pending before the learned Additional Civil Judge, Senior Division, Aligarh. In the said suit, an application for temporary injunction was filed by the appellant herein and the same was rejected. Being aggrieved thereby the appellant herein filed an appeal before the learned Additional District Judge, Aligarh. The learned Additional District Judge, Aligarh, vide order dated 6th April, 2019 passed the following order:-

“The Misc. Civil Appeal No.51 of 2014 filed by the appellant Khereshwar Mahadev & Dauji Maharaj through President Shri Satya Pal Singh & Anr., is allowed. The order dated 27.03.2014 passed by Lower Court on 7-C application in Original Suit No.623 of 2012 Khareshwar Mahadev & Dauji Maharaj Samiti Vs. Kaereshwar Dham Vikas Samiti is set-aside. The file is sent to the Ld. Lower Court for the purpose that if any party intends to bring on record any documentary evidence which may be necessary for disposal of this matter, then while disposing of the same, the Ld. Lower Court would dispose of 7-C application afresh if possible within a period of 4 months. Both the parties in the light of order dated 25.04.2014 shall maintain Status Quo till disposal of 7-C application. Parties are directed to appear before the Ld.

Lower Court on 12.04.2019."

7. It further appears that the Respondent No.5/Manju Devi the Pradhan of Gram Sabha, Hardaspur had filed an application before the District Magistrate, Aligarh for implementation of the order dated 18.09.2007 passed by the Sub-Divisional Magistrate, Lodha by which the temple was directed to be given in favour of the Gaon Sabha, Hardaspur. In the said proceedings, a report was called for from the Sub-Divisional Magistrate, Aligarh. The Sub-Divisional Magistrate, Aligarh submitted his report on 07.02.2023, which reads thus:-

"The suit is under consideration in the court. No proceeding is possible to be conducted because presently a suit in Original Suit No.372/12 titled Satyapal v. State is under consideration/pending in the Court of the Additional Civil Judge, (Senior Division), Aligarh in relation to the aforementioned matter."

8. It appears that on the basis of the report, the District Magistrate did not find it appropriate to proceed further. In these circumstances, a writ petition came to be filed by Respondent No.5/Manju Devi. In the said writ petition, the Division Bench of the High Court of Allahabad passed the order dated 30th May, 2023 directing the Respondent Nos.2 and 3, i.e. the District Magistrate, Aligarh and Sub Divisional Magistrate, Aligarh to comply with the order dated 18th September, 2007. In effect, it directed that the possession of the temple premises to handed over to the respondent(s). Since it was the contention of the appellant that the said order was passed without giving an opportunity of hearing to

the appellant herein, the appellant herein approached this Court by way of Special Leave Petition (c) ...@ Diary No.30082 of 2023. This Court vide order dated 11th August, 2023 permitted the petitions(s) to be withdrawn with liberty to take such steps as are permissible in law. Accordingly, a recall application came to be filed by the appellant herein and the same came to be rejected by the Division Bench of the High Court vide order dated 10th May, 2024. This is how the appellant herein has approached this Court.

9. Shri Gagan Gupta, learned senior counsel appearing for the appellant, submits that the respondent(s) herein by suppressing the orders passed by the learned Additional District Judge and the report of the Tehsildar have obtained the impugned order. He submits that though a recall application, in view of the liberty granted by this Court, was filed before the Division Bench, even without considering the same, the Division Bench has rejected the same.

10. Shri Atul Parmar, learned counsel appearing for the respondent(s) submits that as per Sections 34 and 35 of the Uttar Pradesh Panchayat Raj Act, 1947 (for short, 'the said Act'), the management of all the public properties within the jurisdiction of Gram Panchayat vests and belongs to the Gram Panchayat. He further submits that perusal of sub-section (2) of Section 34 of the said Act would reveal that all markets and fair or such portion thereof as are held upon public land shall be managed and regulated by the Gram Panchayat.

11. He further submits that the order of the Civil Court does not bind the Gram Sabha, inasmuch as the Gram Sabha was not made a party to the said suit.

12. A perusal of the impugned order(s) would reveal that

though it was specifically submitted on behalf of the appellant herein before the High Court that an interim injunction order had been passed by the competent Court in a suit which was pending, the Court cursorily observed that the submission does not appeal to logic because two suits by one committee would clearly not lie. In these circumstances, the least that was expected of the Division Bench of the High Court was a reference to the order passed by the Additional District Judge.

13. It is also to be noted that the appellant had raised a specific objection before the High Court that the petitioner before the High Court (Respondent No.5 herein) was a gram pradhan and that the petition had been filed without compliance of paragraph 128 of the Gram Sabha Manual. However, again the Division Bench cursorily observed that the writ court while exercising extraordinary jurisdiction is not unnecessarily bound by the mandate of paragraph 128 of the Gram Sabha Manual. It further goes on to observe that even otherwise the petition had been filed in individual capacity and in the interest of the Gram Sabha. Observing this, the Division Bench rejected the objection regarding the maintainability of the writ petition.

14. We find that the approach of the High Court is totally untenable. When the appellant herein had specifically brought to the notice of the High Court, the order passed by the competent civil court in its appellate jurisdiction and also the report of the Tehsildar/SDM regarding non-exercise of the jurisdiction under Section 145 of the Cr.P.C in view of the pendency of the civil suit between the parties, the least that was expected of the High Court was to at least refer to it.

15. Apart from that it is a settled law that when a law

requires a particular thing to be done in a particular manner, it has to be done in that manner alone or not at all. When a legal proceeding to be filed by the Gram Sabha is to be filed only on the resolution of the Gram Sabha, the petition at the instance of Respondent No.5/Manju Devi, without there being a resolution of the Gram Sabha was not tenable at the instance of the Gram Sabha. If the High Court wanted to treat the same as a public interest litigation at the instance of Respondent No.5/Manju Devi in her individual capacity then the High Court ought to have taken into consideration as to whether the public interest litigation should have been entertained in a private lis or not.

16. In that view of the matter, we are inclined to allow these appeals. Therefore, the impugned orders are set aside and the appeals are allowed.

17. In pursuance to the directions issued by the learned Additional District Judge vide order dated 6th April, 2019, we direct the learned Addl. Civil Judge, Senior Division, Aligarh to dispose of Original Suit No.623 of 2012 as expeditiously as possible and in any case within a period of six months from today.

18. We further direct the appellant herein to implead the Gram Sabha as party defendant in the said suit so that all questions between all the parties can be decided by the Civil Court in an effective manner.

19. Till the decision of the civil suit, the order passed by the learned Additional District Judge dated 6th April, 2019, directing the parties to maintain status quo, shall continue to operate.

20. Pending application(s), if any, shall stand disposed of.

.....J
(B.R. GAVAI)

.....J
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
MARCH 05, 2025