

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (C) NOS. 853-855 OF 2015

IN

CIVIL APPEAL NOS. 3276-3278 OF 2013

**THE BORDEURI SAMAJ OF SRI SRI MAA
KAMAKHYA**

..... PETITIONER

v.

RIJU PRASAD SARMA & ORS.

..... RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

1. The petitioner has invoked the jurisdiction of this Court under Article 129 of the Constitution of India read with the Contempt of Courts Act, 1971 for initiating action against the respondents nos.1 to 5 for committing breaches of the directions contained in the Judgment of this Court dated 7th

July 2015 in Civil Appeal Nos.3276-3278 of 2013, **Riju Prasad Sarma and Others v. State of Assam and Others**¹.

2. The issue involved in the said Judgment is in respect of Sri Sri Maa Kamakhya Devalaya. The case made out in the contempt petitions is that the petitioner is the elected Dolois representing members of Bordeuri Samaj of Kamakhya Devalaya. It is the case of the petitioner that the right of Bordeuri Samaj to manage religious affairs of Kamakhya Temple has been recognised from time immemorial. Bordeuri Samaj consists of members of five families and Dolois (head priest) is elected from amongst the members of the five families. It is pointed out that in the year 1998, a self-styled body in the name and style of Kamakhya Debutter Board ('Debutter Board') was formed by the respondent nos.1 to 4 and that they have illegally usurped the power that has been historically vested in the office of Dolois.

3. The breach alleged in these contempt petitions is of the direction contained in paragraph 73 of the aforesaid Judgment of this Court dated 7th July 2015, which reads thus:-

"73. Since the Debutter Board is occupying some part of the premises in

¹ (2015) 9 SCC 461.

the Temple of Sri Sri Maa Kamakhya Temple on account of interim orders of this Court, all those interim orders are now vacated. The District Administration is directed to ensure that those premises are vacated by the members or representatives of the Debutter Board at the earliest and in any case within four weeks. The premises and other properties of Sri Sri Maa Kamakhya Temple shall, if required, be placed back within the same time in possession of the Bordeories Samaj through the last elected Dolois against receipts which shall be retained in the Office of Deputy Commissioner, Gauhati. The parties representing the Debutter Board are also directed to hand over the vacant and peaceful possession of the premises concerned and other properties of the Temple, if any, within four weeks. There shall be no order as to costs".

(underline supplied)

The first grievance in the contempt petitions is that the possession of the immovable properties being 2 buildings mentioned in paragraph 2(t) of the contempt petition has not been handed over to Bordeuri Samaj by the respondent nos.1 to 5. The second grievance is that various movable properties of the Temple, as detailed in the representation dated 3rd August 2015, have not been handed over to the petitioner. The third grievance is that though as per the statement of accounts submitted on behalf of Debutter Board, it was holding surplus cash amount of not less than

Rupees eleven crores, which belonged to the Deity, it has not been paid. Lastly, a grievance is made that books of accounts pertaining to the Temple have not been handed over to the petitioner.

4. Initially, notice of these petitions was issued only to the respondent no.5 - Deputy Commissioner. Thereafter, notice was also issued to the respondent nos.1 to 4 as well. In the order dated 18th April 2016 passed in these contempt petitions, this Court recorded undertaking of the respondent nos.1 to 3 that they will furnish whatever remaining details relating to their bank accounts and the funds available in their accounts. The undertaking was recorded without prejudice to the stand of the said respondents that certain accounts are not connected with Kamakhya Devalaya. Further order dated 4th July 2016 passed by this Court records that the respondent no.5 stated that an inquiry is being held to find out all the details. This Court directed the respondent nos.1 to 4 to file copies of the consolidated accounts, if not filed earlier, as well as copies of the entries for the relevant period in the pass books of all the bank accounts. By the Order of this Court dated 16th August 2017, the State of Assam was ordered to be made a party to the petition. The State Government filed an affidavit in terms of the order of this Court dated 6th August 2019 incorporating the steps which it was proposing to take for implementing the

Judgment dated 7th July 2015. Accordingly, an affidavit was filed which was dealt with in the order dated 15th November 2019. The said order reads thus:-

“The State has since filed an affidavit pursuant to our order dated 06.08.2019. Among other things, the State wishes to examine, by way of preliminary enquiry, what is the amount of surplus money (that is stated to be Rs.11 Crores and odd) and which is disputed. The State may conduct such preliminary enquiry which may then be given to us in the form of a report in a sealed cover within a period of six weeks from today.

Dr. Dhavan also points out that certain amounts have been disbursed from this sum after the 07.07.2015 judgment of this Court. The amount so disbursed may also form the subject matter of this enquiry.

List on Monday, the 13th January, 2020.”

(Underline supplied)

On 31st January 2020, this Court passed further order, which reads thus:-

“We have perused the report of the Additional Director General of Police, CID, Assam dated 08.01.2020. The report reveals that a sum of Rs.7,62,03,498/- has been withdrawn in cash by the Kamakhya Debtor Board from 2 accounts, one in UCO Bank and one in United Bank of India. These withdrawals have taken place

since 21.11.2011 in violation of the Supreme Court's order without taking approval from the Deputy Commissioner, being cleverly split into amounts of Rs.50,000/- so as to give an impression as if the order is complied with. These facts, prima facie, establish misappropriation of funds by the Board. As per the report, the office bearers did not cooperate with the enquiry officer and concealed vital information including existence of bank accounts in their names. It is then stated that "a proper investigation based on lodging of criminal case would facilitate discovery of financial trail, exact extent of misappropriation, identity of co-conspirators, retrieval of relevant documents, etc."

It would be in the fitness of things if the lodging of a criminal case be done immediately and a proper investigation is conducted within a period of three months from today. A report be given to this Court on or before 14th May, 2020.

List the matter thereafter.

Copies of this report be given to all the parties."

(Underline supplied)

5. Dr. Rajiv Dhavan, the learned Senior Counsel appearing for the petitioner at the outset stated that what remains in the contempt petitions is the recovery of the misappropriated money belonging to Temple from the respondent nos.1 to 4. We may state here that it is pointed out across the

Bar that the respondent no.2 is no more. The learned Senior Counsel invited our attention to the report dated 8th January 2020 submitted by the Additional Director General of Police, CID, Assam, which records that there is a misappropriation of a sum of Rs.7,62,03,498/-. It is recorded in the said report that the office bearers of Debutter Board did not cooperate for the inquiry. He submitted that the respondent nos.1 to 4 never raised any objection to the said report. Therefore, by accepting the said report, by the order dated 31st January 2020, this Court directed that a criminal case be lodged in connection with the misappropriation and a proper investigation be conducted within a period of three months. He submitted that the respondent nos.1 to 4 accepted the correctness of the report which recorded that there was a misappropriation of the sum of Rs.7,62,03,498/. The said amount being the property of the Temple ought to have been refunded by the respondent nos.1 to 4 in terms of the directions issued in paragraph 73 of the Judgment dated 7th July 2015. He submitted that the report of the inquiry officer was never questioned by the said respondents and, therefore, in terms of the directions contained in paragraph 73, the said respondents were under an obligation to pay the said amount to the Temple. The learned Senior Counsel further submitted that the subject matter of the Judgment dated 7th July 2015 is not only the Kamakhya

Temple but also the other subsidiary temples. He submitted that by filing an affidavit, now the respondent nos.1, 3 and 4 are seeking to contend that the Judgment dated 7th July 2015 was only in respect of the main Kamakhya Temple. He pointed out that in the affidavit, the said respondents have contended that the properties of Kamakhya Temple need to be demarcated. He submitted that there is a gross breach committed by the respondent nos.1 to 4 of the directions contained in the Judgment dated 7th July 2015.

6. Shri R. Venkataramani, the learned Senior Counsel appearing for the respondent nos.1, 3 and 4 submitted that there is no direction in the Judgment dated 7th July 2015 to pay any amount to the petitioner or to the Deity. There is no such discussion in the said Judgment dated 7th July 2015. Even paragraph 73 of the Judgment does not contain any such direction. He submitted that there is no dispute that as per the directions contained in paragraph 73 of the Judgment, the immovable properties of the Temple have already been handed over. He relied upon a decision of this Court in the case of **Sudhir Vasudeva, Chairman & MD. ONGC & Ors. v. M.George Ravishekar & Ors.**² He submitted that the power to punish for contempt has to be exercised with greatest care and caution.

² (2014) 4 SCR 27.

He submitted that considering the directions issued in paragraph 73 of the Judgment dated 7th July 2015, after having handed over all the immovable properties, an action for contempt cannot be initiated against the respondents.

7. We have given careful consideration to their submissions. We have already quoted paragraph 73 of the Judgment dated 7th July 2015, which contains effective directions. Perusal of the Judgment shows that there is no discussion therein about the liability of the respondent nos.1 to 4 to pay any specific amount. Paragraph 73 refers to premises and other properties of Kamakhya Temple. However, there is no finding recorded that any particular amount is payable by the respondent nos.1 to 4 to the petitioner.

8. The learned Senior Counsel appearing for the petitioner pointed out that immovable property of Kamakhya Temple, as well as other subsidiary temples has been handed over to the petitioner in terms of the Judgment dated 7th July 2015. Though there is no specific direction in paragraph 73 to pay any amount, reliance is placed by the learned Senior Counsel appearing for the petitioner on the order dated 31st January 2020, which we have quoted above. It is recorded in the said order that the report of the Additional Director General of Police, CID, *prima facie*, establishes

misappropriation of funds by the Debutter Board. Even in this order, there is no direction issued to pay the money which has been allegedly misappropriated. The reason is that the *prima facie* observation about misappropriation is based on the view expressed in the report. What is observed in the said report is not conclusive.

9. It is argued that the report of the Additional Director General of CID, Assam has not been disputed by the concerned respondents. Perusal of the order dated 31st January 2020 shows that there was no opportunity granted to the parties to file any objections to the report. It cannot be said that as the respondents did not object to the report, they have accepted the liability to pay the amount of Rs.7,62,03,498/-. Moreover, the observations in the report cannot be treated as concluded findings. Even assuming that paragraph 73 of the Judgment dated 7th July 2015 includes a direction to pay money, there is no adjudication made to decide what is the extent of liability. Hence, in our view, no case made out to take action under Article 129 of the Constitution read with the Contempt of Courts Act, 1971. Moreover, the contempt jurisdiction is always discretionary which should be

exercised sparingly and with circumspection. This is not a fit case to exercise the said jurisdiction by punishing the respondents. However, it is always open for the petitioner to adopt appropriate proceedings for recovery of money as mentioned in the report in accordance with law.

10. Accordingly, the contempt petitions stand disposed of in the above terms. All the pending applications, if any, also stand disposed of.

.....J
(AJAY RASTOGI)

.....J
(ABHAY S. OKA)

New Delhi;
December 15, 2021.