

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

S.B.: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No. 11 of 2018
IN
W.P. (C) No. 49 of 2017

1. Sri Guru Singh Sabha, a society, registered under the West Bengal Societies Registration Act, 1961, having its office within the Gurudwara premises at Guru Nanak Sarani, Sevoke Road, Siliguri, Post Office and Police Station, Siliguri, District Darjeeling, Pin No. 734001 in the State of West Bengal, herein represented by its Secretary Sardar Dalbinder Singh Son of Late Pritam Singh residing at 274 Nivedita Road, Pradhan Nagar, District Darjeeling, having its office within the Gurudwara premises on behalf of Shiromani Gurudwara Prabandhak Committee, Sri Amritsar Sahib Punjab.
2. Amritpal Singh Khalsa,
R/o 201-2, Pleasure Park,
Opposite Pinto Park,
O.T. Section,
Ulhasnagar-421 003. Petitioners

versus

1. The State of Sikkim, service through the Secretary, Ecclesiastical Department, Government of Sikkim, Old Secretariat Building, Church Road, Gangtok, Pin No. 737 101.
2. The District Collector,
Mangan, North Sikkim,
Pin No. 737 116
3. The Sub-Divisional Magistrate,
Chungthang, North Sikkim,
Pin No. 737 120.

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

4. The Lachen Dzumsa,
Lachen, North Sikkim,
Pin No. 737 120. ... Respondents

**Application for impleadment of PCCF-cum-Secretary,
Forest, Environment & Wildlife Management Department,
Government of Sikkim as a Respondent.**

Appearance:

Dr. Navin Barik, Mr. Sandip Majumdar, Mr. Ritesh Khatri and Mr. Deepu Prasad, Advocates for the Petitioner .

Mr. Amritpal Singh Khalsa, (Petitioner No.2 in person), Mr. Brijinder Singh Loumba, Advocate for Mr. Ajmer Singh Randhawa, Applicant in person in I.A. No. 5/2017. Ms. Sushmita Dong, Advocate.

Mr. Karma Thinlay, Senior Government Advocate with Mr. Thinlay Dorjee Bhutia, Government Advocate for Respondent Nos.1, 2 and 3.

Mr. Jorgay Namka, Ms. Panila Theengh, Ms. Tashi Doma Sherpa and Mr. Karma Sonam Lhendup, Advocates for Respondent No.4.

ORDER

(01.12.2018)

Bhaskar Raj Pradhan, J

1. Sri Guru Singh Sabha, a Society, registered under the West Bengal Societies Registration Act, 1961 having its office in West Bengal has filed the Writ Petition against the State of Sikkim through the Secretary, Ecclesiastical Department, the District Collector and the Sub-Divisional Magistrate, North Sikkim and the Lachen Dzumsa.

2. The Petitioner contends that in the mid eighties Sikhs in the Indian Army and Members of other professionals collected

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

funds and built a Gurudwara at Gurudongmar Lake and placed the Nishan Sahib there. Since then the Gurudwara has been open for public to offer regular prayers and the Government of Sikkim has always issued permission to pilgrims wanting to visit. It is alleged that on 16.08.2017 the “*Dzumsa*” with the help and assistance of the local administration and more particularly the Sub-Divisional Magistrate removed the holy Guru Granth Sahib Ji, uprooted the Nishan Sahib, dismantled all internal furniture’s and removed the holy items from the Gurudwara premises and placed it on the road. Being aggrieved by the said act and the failure of the State in taking any steps against the conduct of the Sub-Divisional Magistrate and the “*Dzumsa*” the present Writ Petition under Article 226 of the Constitution has been preferred. The Writ Petition seeks the restoration of the Guru Granth Sahib Ji, the Nishan Sahib and a direction to fix all internal furniture and other holy items in the Gurudwara as it was prior to 16.08.2017. The Petitioner seeks a further direction upon the State-Respondents particularly the State of Sikkim through the Ecclesiastical Department and the District Collector to refrain from dismantling the Gurudwara. The Writ Petition also seeks a direction upon the Respondents to certify and transmit all records pertaining to the instant case. A writ of prohibition is also prayed for prohibiting the State of Sikkim through the Ecclesiastical Department, the District Collector and

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

the Sub-Divisional Magistrate their servants, agents and/or assigns from taking any steps to dismantle the Gurudwara.

3. An additional affidavit has also been filed by the Petitioner. In the said affidavit it is stated that the State-Respondent has plans to build a “*Gumpa*” at the site as has been reported in local newspapers and thus the Petitioner apprehends that the Gurudwara would be demolished.

4. The impleaded Respondents have filed their counter-affidavits. The District Collector has denied the involvement of the District administration in the alleged removal. The State of Sikkim through the Ecclesiastical Department has provided the background of the dispute regarding the construction of the Gurudwara near the Gurudongmar Lake on reserved forest land. The “*Dzumsa*” opposes the building of the Gurudwara by the Army.

5. On 24.03.2018 an application for impleadment of PCCF-Secretary, Forest, Environment and Wildlife Management Department of the Government of Sikkim has been filed. In the said application reference is made to a report by the Wildlife Circle of the Forest, Environment and Wildlife Management Department of a survey conducted at Chho Lhamu, Gurudongmar Tso, Gyamtsona and other areas of the plateau during 2nd to 6th December 1997 pointing out about a newly constructed Gurudwara. The application for impleadment also

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

refers to exchanges between the Department and the army regarding the construction of the Gurudwara in the reserved forest. It is the case of the Applicant that the army activities within the Gurudongmar Lake and its surrounding areas violate the forest (Conservation Act, 1980) and prior permission has not been obtained under Section 2 of the said Act. It is pointed out that in the counter-affidavit filed by the State-Respondent a preliminary objection of non-joinder of the Applicant as a necessary party had been taken. A topo-sheet map showing the location of the Gurudongmar Lake in the reserved forest area is also filed therewith. The Applicant pleads that the Applicant is a necessary party, the application is bonafide and the impleadment of the Applicant would not change the nature and character of the Writ Petition and no prejudice would be caused to the Petitioner as well as the private Respondent.

6. The Petitioner has filed a reply dated 18.04.2018 to the said application. In the said reply the Petitioner pleads that the Writ Petition has been filed for a limited purpose of complaining about the gross violation of Article 25 of the Constitution of India by the State-Respondents regarding the illegal acts committed on 16.08.2017. The said reply also states that the Gurudwara at the Gurudongmar Lake has been present for more than 20 years and it was well within the knowledge of the State-Respondents.

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

7. Heard the Applicant, the Petitioner as well as the Respondents. Mr. Karma Thinlay Namgyal, learned Senior Government Advocate for the Applicant drew the attention of this Court to the very first prayer to the Writ Petition seeking a direction upon the State-Respondents from refraining or from doing any act and conduct to dismantle the structure of the Gurudwara at Gurudongmar Lake and submit that since admittedly the Gurudwara is constructed on reserved forest land the Applicant was both a necessary and a proper party. Dr. Navin Barik the learned Counsel for the Petitioner on the other hand would contest the application and submit that the present Writ Petition is limited to the controversy over the incident of 16.08.2017 and the Applicant was seeking to place unnecessary facts before this Court in order to expand its scope and derail the purpose of the Writ Petition. He would also submit that the Applicant was in fact trying to get over the period of limitation on their inaction to dismantle the Gurudwara which has been inexistence for more than 20 years. The Petitioner would submit that in the circumstances the Applicant was neither a necessary party nor a proper party. The Petitioner would also rely upon various judgment of the Supreme Court for the said purpose which shall be examined now.

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

8. In re: **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & Ors.**¹ the Supreme Court would hold:

“6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.”

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“8. The case really turns on the true construction of the rule in particular the meaning of the words “whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit”. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the inter-vener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.”

9. In re: **Kasturi v. Iyyamperumal & Ors.**² the Supreme Court would hold:

“16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the

¹ (1992) 2 SCC 524

² (2005) 6 SCC 733

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.”

10. In re: **Mumbai International Airport Private Limited v. Regency Convention Centre & Hotels Private Limited & Ors.**³ the Supreme Court would hold:

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10. (2) Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just,

³ (2010) 7 SCC 417

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

14. *The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

15. *A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”*

11. In re: **Baluram v. P. Chellathangam & Ors.**⁴ the Supreme Court would rely upon its judgment in re: **Mumbai International Airport (Supra)** and hold that the Appellant therein could not be

⁴ AIR 2015 SC 1264

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

held to be a stranger being beneficiary of the trust property and thus the Trial Court was justified in impleading him as a party.

12. In re: **Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya & Ors.**⁵ the Supreme Court would hold:

“10. Order 1 Rule 10 of the Code enables the court to add any person as a party at any stage of the proceedings, if the person whose presence in court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the court to substitute a party in the suit who is a wrong person with a right person. If the court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.”

13. Rule 101 of the Sikkim High Court (Practice & Procedure) Rules, 2011 (the P.P. Rules) provides:

“101. Joinder of respondents- Every person who is likely to be affected in any manner by the result of a petition shall be joined as a respondent thereto. Any petition in which a necessary party is not impleaded shall be liable to be dismissed.”

14. Rule 101 of the P.P. Rules provides that every person likely to be affected in any manner by the result of the petition shall be

⁵ (2017) 9 SCC 700

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

joined as a Respondent thereto and any petition in which a necessary party is not impleaded is liable to be dismissed.

15. It is not in dispute that the Gurudwara has been built by the army near the Gurudongmar Lake. As per the State-Respondents as well as the Applicant the Gurudwara has been built by the army on reserved forest land. The Applicant seeks a prayer of prohibition upon the State of Sikkim through the Ecclesiastical Department, the District Collector and the Sub-Divisional Magistrate of the North District not to dismantle the Gurudwara. Any activity if in a reserved forest area would necessarily need the permission and involvement of the Applicant. To be able to issue an effective writ of prohibition commanding the State-Respondents to refrain from dismantling the Gurudwara it is necessary to hear the Applicant since it is stated that the army had constructed the Gurudwara on reserved forest land. There is a dispute between the contesting parties regarding the length of time the Gurudwara has been in existence at the Gurudongmar Lake. It would be essential to get the version of the Applicant on whose land, as pleaded, the Gurudwara has been constructed by the army. It is also necessary to implead the Applicant to enable this Court to effectively and completely adjudicate upon and settle all the questions involved in the present Writ Petition. Writ of prohibition upon the State through the Ecclesiastical

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

Department, District Collector and the Sub-Divisional Magistrate only may not suffice to give complete relief to the Petitioner, if found to be desirable, without a writ against the Applicant on whose land the Gurudwara is said to have been constructed by the army as well.

16. This is a Writ Petition filed by the Petitioner. Merely because the Applicant is impleaded and heard in the present proceedings would not, as apprehended by the Petitioner, give the Applicant a fresh cause of action if the action which may be taken by the Applicant is barred by limitation. It is true that the Petitioner is the *dominus litis* and may choose the parties against whom it wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. However, the Court may at any stage of the proceedings order the name of any party who ought to have been joined, whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the writ petition, be added. This is the essence of Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 which is also reflected in Rule 101 of the P.P. Rules, 2011.

17. In the circumstances, the Application for impleadment of the PCCF-Secretary, Forest Environment & Wildlife Management Department, Government of Sikkim as a respondent is allowed. Consequently the array of the Respondents may be amended

I.A. No. 11 of 2018
IN
W.P. (C) No 49 of 2017
Sri Guru Singh Sabha & Anr. v. State of Sikkim & Ors.

accordingly and the Applicant is permitted to file a counter-affidavit if so desired.

(Bhaskar Raj Pradhan)
Judge
01.12.2018

to/ Approved for reporting: yes.
Internet: yes.