

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 6573 of 2013.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Purba Banga Gurukul Brahmacharya
Ashram represented by its Sebayet Shawmi
Laxmi Nrayan Kripa Ananda Puri Maharaj.

..... Petitioner

-Versus-

People's Republic of Bangladesh
represented by the Secretary, Ministry of
Land and others.

. . . . Respondents

Mr. M. A. Azim Khair with
Mr. Mahbub Ali,
Mr. Sultanuzzaman and
Mr. Md. Iqbal Hossain, Advocates
. . . For the petitioner.

Mr. Bivash Chandra Biswas with
Mr. J. K. Paul
Mr. Chanchal Kumar Biswas
Mr. Utpal Biswas and
Mr. Liton Acharjeea, Advocates
. . . For the added respondent No. 4.

Present:

Mr. Justice J. B. M. Hassan
and
Mr. Justice Razik Al Jalil

Heard on 24.04.2024, 28.04.2024,
30.04.2024, 09.05.2024 and Judgment
on 15.05.2024.

J. B. M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why they shall not be directed to make payment of
compensation money, under LA Case No. 5 of 2010-2011, in

respect of acquisition of land of the petitioner measuring 3.35 acres appertaining to BS Plot No. 202. BS Khatian No. 847, Uttar Pahartali, PS-Doublemooring now kulshi, District-Chittagong and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to the issuance of the Rule Nisi are that the petitioner is a public Trust and represented by its Sebayet. The property measuring an area of 3.35 acres appertaining to B.S. Plot No. 202 BS Khatian No. 847 under Mouza Uttar Pahartali, Police Station-Double Mooring, at present Khulshi, District-Chattogram (shortly, schedule property) belongs to the petitioner-Ashram and accordingly latest B.S. Khatian has been published in its name without any protest or objection from any quarter. The aforesaid property was acquired along with other land through LA Case No. 5 of 2010-2011 for the purpose of establishment of the Asian University for Woman (requiring body) but compensation money amounting to Tk. 5,16,07,528/- having not been paid the present writ petition was filed and Rule Nisi was issued.

The respondent No. 2, Deputy Commissioner, Chattogram by filing an affidavit in opposition denied the contents of the writ petition. This respondent contends that regarding the schedule property, Other Class Suit No. 124 of 1997 has been instituted before the learned Joint District Judge, 2nd Court, Chattogram and due to passing an order of status-quo therein, the compensation could not be paid.

During pendency of the Rule Nisi, one Sreemath Swami Shankarananda Tirtha filed an application for addition of party in the Rule

Nisi as respondent No. 4. The said application was kept with the record for consideration at the time of hearing of the Rule. Ultimately, the Rule was heard and made absolute by the judgment and order dated 09.08.2015 directing the respondents to make the payment of compensation money in pursuance of the compensation award within 60 days from the date of receipt of the judgment and order.

Against the said judgment Swami Shankarananda Tirtha filed Civil Petition for Leave to Appeal (CPLA) No. 2083 of 2016 alleging that without disposal of his application for addition of party, the Rule Nisi was disposed of in violation of previous order. Ultimately, by the judgment and order dated 27.11.2017 the CPLA was disposed of setting aside the judgment and order of the High Court Division dated 09.08.2015 with cost at Tk. 1,00,000/- (one lac) to be paid to the learned Advocate for the writ petitioner. The Appellate Division also directed the High Court Division to hear and dispose of the application for addition of party filed by the 3rd party on merit and then to hear the writ petition afresh and to dispose of the same in accordance with law. Thereafter, at the instance of the learned Advocate for the petitioner the Rule has been fixed before this Bench for hearing as per direction of the Appellate Division. The application filed by Swami Shankarananda Tirtha was taken up for hearing. But no one appears to press the application due to which it was rejected for default by order dated 13.11.2018.

Thereafter, one Sachindra Lal Dey filed an application to implead him as respondent and this Court by order dated 17.02.2019 added him as

respondent No.4. Sachindra Lal Dey as added respondent No.4 has filed an affidavit in opposition contending, *inter alia*, are that One Dinesh Chandra Mitra executed a registered deed of gift on 20.06.1938 in respect of schedule land alongwith other land for establishing the Ashram appointing Swami Sachidananda Tirtha Nath as its Sebayet. The Ashram was fully destructed by the Pakistani soldiers and local Razakars in the year, 1971. Afterwards the main Sabayet of the Ashram who established the said Ashram, namely, Swami Sachidananda Tirtha Natha went for pilgrimage (temple visit and worship) to India and died there.

But one of his disciples, namely, Sreemath Swami Shankarnanda Tirtha staying in the Ashram continued worshipping in the said Ashram as Sebayet and only by his personal effort, he reestablished the said Ashram in the year of 2005 by seeking help from the local people. To run the religious activities of the said Ashram he introduced a constitution which was lastly published on 27.04.2010 and also approved a committee in participation of the local Hindus to observe the religious festivals in the Ashram.

On the other hand, the writ petitioner Swami Laxmi Narayan Kripa Ananand Puri Maharaj was not the Sebayet of the said Ashram who even not went to the Ashram for a single day. The instant writ petition was filed by a non- interested person of the Ashram and being aware of the fact, Sreemath Shwami Shankarananda Tirtha, as the then Sebayet filed an application for addition of party and their lordships were pleased to keep the application with the record.

Subsequently, Sankarananda Tirtha was refrained from functioning of the Ashram at the instance of the local worshipers and a meeting was held on 12.08.2016 taking resolution to remove Shankarananda Tirtha. Thereby, the answering added respondent No.4, Sachindra Lal Dey was assigned as President of the Ashram in order to manage the deity until appointment of regular Sebayet. Thus, the added respondent No.4 has been managing the whole Ashram and in the meantime, he developed the infrastructure of the Ashram and protected its property. The respondent also filed other class suit No. 01 of 2022 before learned Senior Assistant Judge, 2nd Court (Sadar), Chattogram to protect properties of the Ashram.

Further contentions of this respondent are that Shankarananda Tirtha instituted other class suit No. 33 of 2011 and again withdrawing the same, he instituted other class suit No. 456 of 2012 (renumbered as 15 of 2020) before the learned Joint District Judge, 2nd Court, Chattogram against the present writ petitioner, Sreemoti Shawmi Laxmi Narayan Kripa Ananda Puri Maharaj who has filed this writ petition on behalf of the Ashram. The said suit is still pending wherein the locus-standi of this petitioner was challenged. In the circumstances, if the compensation money is paid in favour of Sreemoti Shawmi Laxmi Narayan Kripa Ananda Puri Maharaj allegedly representing the Ashram, the money will not be received by the proper owner of the acquired land.

Further contentions of this respondent are that Shankarananda Tirtha in the meantime died and thereafter one Dulal Chandranath Dev has been substituted in the suit in place of deceased to represent the Ashram as

plaintiff. The substituted representative of the Ashram made an understanding with the present writ petitioner in order to grab the Ashram's property both moveable and immovable. In the circumstances, the compensation money can not be paid in favour of the present writ petitioner.

After placing the writ petition and other materials on record, Mr. M. A. Azim Khair, learned Advocate for the petitioner submits that Shawmi Laxmi Nrayan Kripa Ananda Puri Maharaj has been managing the Ashram as its Sebayet by virtue of Trust deeds dated 10.03.1982 and 13.05.2007 and in course of his functioning the Ashram's property having been acquired, he filed an application demanding compensation money. He further submits that all the process of acquisition including notices were issued to the petitioner Ashram through the Sebayet, Shawmi Laxmi Nrayan Kripa Ananda Puri Mahraj and award was also prepared with his name. But the same having not been paid, he filed this writ petition seeking direction upon the respondents to pay the compensation money. He also submits that in the other class suit No. 15 of 2020, the respondent No. 4 unsuccessfully tried for substitution in place of Shankarananda Tirtha representing the Ashram as Plaintiff. The Trial Court on consideration of all facts and circumstances denied to substitute him in the suit having no connection with the Ashram. He also submits that by virtue of Trust deed the present petitioner has been functioning and as such, there is no irregularity or illegality in making the payment in his favour.

Mr. Bivash Chandra Biswas, learned Advocate appearing for the added respondent No.4 contends that the Ashram was created by the deed of

endowment dated 20.06.1938 appointing one Sachchidananda Tirtha Nath as Sebayet. After his death there was no Sebayet, as per the deed of endowment of 1938. He further contends that in the absence of Sebayet, the local worshippers in light of deed of endowment constituted a managing committee wherein the respondent No.4 has been assigned as President of the said committee. Thus, he has been managing the Ashram taking number of initiatives for its development. He again contends that this respondent raised objection against the acquisition process on the ground that it being an worship place, can not be acquired under the prevailing law. But the writ petitioner Shawmi Laxmi Nrayan Kripa Ananda Puri Mahraj in order to grab the compensation money accepting the acquisition, fraudulently filed this writ petition. He also submits that challenging the Trust deeds as alleged by the writ petitioner, one Shankarananda Tirtha filed other class suit No. 20 of 2015 but after his death one Dulal Chandranath Dev was substituted in the said suit as plaintiff and surprisingly, he made compromise with the present writ petitioner.

Learned Advocate, however, contends that this respondent does not have any objection regarding payment of compensation money in favour of the Ashram. But the present petitioner, Shawmi Laxmi Nrayan Kripa Ananda Puri Mahraj should not be allowed to receive compensation money. The money should be disbursed to the appropriate authorized person on behalf of the Ashram which can only be determined through civil suit.

We have gone through the writ petition, affidavits in opposition separately filed by the respondents No. 2 and 4 and the supplementary affidavits filed by the parties.

It is admitted that regarding schedule land alongwith other land, one Dinesh Chandar Mitra executed a registered deed of Endowment bearing No.2129 dated 20.06.1938 for establishing an Ashram, namely, Purba Banga Gurukul Brahmacharya Ashram, shortly, the Ashram appointing its Sebayet to one Sachchinada Tirtha Nath. In the said deed of Endowment, regarding appointment of Sebayet the executant intended as follows:

“আপনী সংসার ত্যাগী মতে গুরুকুল ব্রহ্মচর্যশ্রেম স্থাপন করার জন্য স্থানের আবশ্যিক জানাইবেন। আমি উক্ত আশ্রম প্রতিষ্ঠা করার নিমিত্ত স্বেচ্ছায় অন্যের বিনানুরোধে নিম্ন তপশিলের জমিজমা পূর্ববন্দ গুরুকুল ব্রহ্মচর্যশ্রেমের পক্ষে সেবায়ত আপনাকে নিবুঢ় স্বত্বে দান করিলাম। প্রকাশ থাকে যে উক্ত সম্পত্তিতে আপনার ব্যক্তিগত কোন স্বার্থ বা স্বত্ব থাকিবে না। আপনি তাহা ব্যয় হস্তান্তর বন্ধক বা প্রজাপত্তন ইত্যাদী করিতে পারিবেন না। আপনার ছেলের জন্য এই সম্পত্তি কেহই দাবী করিতে পারিবে না বা আপনার লোকান্তরে কেহই ওয়ারিশী স্বত্বে দাবী করিতে পারিবে না। আপনার অবর্তমানে উক্ত আশ্রমের শিষ্যগণের মনোনিত ব্যক্তি সেবায়ত হইয়া এই সম্পত্তি শাষন সংরক্ষণ করিবেন।”

(Underlined)

It is also admitted that 3.35 acres land belongs to the said Ashram, has been acquired under LA Case No. 5 of 2010-2011 for the purpose of establishment of the Asian University for Woman (the University). After completion of acquisition process, the compensation of the acquired land was determined at Tk. 5,16,07,528/- Claiming the said amount Shawmi Laxmi Nrayan Kripa Ananda Puri Maharaj (shortly, Maharaj) claiming

himself as Sebayet of the Ashram filed this writ petition in the name of Ashram.

Respondent No.2, the Deputy Commissioner, Chattogram contends that due to pendency of a suit and an order of status-quo passed therein, the payment could not be made and it led the petitioner to file this writ petition. Yet, question arises if the payment is made, who will receive the compensation money on behalf of the Ashram. It is on record that the acquisition process was conducted under the Acquisition and Requisition of Immovable Property Ordinance, 1982. Section 10(2) of the said Ordinance, 1982 incorporates the following provisions:

“10.(2) If the persons entitled to compensation do not consent to receive it, or if there be no person competent to receive the compensation, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Deputy Commissioner shall keep the amount of the compensation in a deposit account in the Public Account of the Republic which shall be deemed payment for the purpose of taking over possession of the property without any prejudice to the claim of the parties to be determined by the Arbitrator.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.”

(Underlined)

In the meantime, the Ordinance, 1982 has been repealed enacting “স্বাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭”, shortly, the Act, 2017. The aforesaid provision under section 10(2) of the Ordinance, 1982 has also been

incorporated in the newly enacted law, under section 11(2) of the said Act which runs as follows:

“১১। (২) ক্ষতিপূরণের দাবিদার ক্ষতিপূরণের অর্থ গ্রহণ করিতে অসম্মত হইলে অথবা ক্ষতিপূরণ গ্রহণের জন্য কোনো দাবিদার পাওয়া না গেলে অথবা ক্ষতিপূরণ দাবিদারের মালিকানা লইয়া কোনো আপত্তি উত্থাপিত হইলে অথবা ক্ষতিপূরণের অংশ নির্ধারণে কাহারো কোনো আপত্তি থাকিলে, জেলা প্রশাসক ক্ষতিপূরণের অর্থ প্রজাতন্ত্রের সরকারি হিসাবে জমা রাখিবেন যাহা, কোনো পক্ষের আরবিট্রেটর কর্তৃক নির্ধারিতব্য দাবিকে ক্ষুণ্ণ না করিয়া, সংশ্লিষ্ট স্থাবর সম্পত্তির দখল গ্রহণের ক্ষেত্রে পরিশোধিত বলিয়া গণ্য হইবে: তবে শর্ত থাকে যে, কোনো ব্যক্তি স্বার্থসংশ্লিষ্ট ব্যক্তি হিসাবে গৃহীত হইলে তিনি, ক্ষতিপূরণের পরিমাণের বিষয়ে আপত্তিসহ, উক্ত অর্থ গ্রহণ করিতে পারিবেন: আরও শর্ত থাকে যে, কোনো ব্যক্তি আপত্তি ব্যতিরেকে ক্ষতিপূরণে অর্থ গ্রহণ করিলে তিনি ধারা ৩০ এর অধীন দরখাস্ত করিবার জন্য যোগ্য হইবেন না।”

From the materials available on record, we find that Sachchidananda Tirtha Nath although was admitted Sebayet of the Ashram but after his death according to the Endowment deed of 1938, there is no Sebayet at the moment. However, the writ petitioner Maharaj has claimed his position by virtue of two deeds of Trust dated 10.03.1982 and 13.05.2007. On the other hand, these two deeds of Trust have been challenged under other class suit No. 15 of 2020. Moreover, the said suit was filed by one Shankarananda Tirtha and after his death one Dulal Chandranath Dev was substituted to represent the Ashram claiming Sebayet. It further appears that in the meantime, Dulal Chandranath Dev has entered into an understanding with the present writ petitioner Shawmi Laxmi Nrayan Kripa Ananda Puri Maharaj.

On the other hand, the present respondent No.4 is claiming to have been managing the Ashram as President of the Managing Committee

constituted among the local worshippers. In the aforesaid circumstances, considering the basic admitted deed of Endowment registered on 20.06.1938 executed by the owner of the property, we find that in the absence of appointed Sebayet, namely, Sachindananda Tirtha Nath under the original deed of 1938, a new Sebayet has to be appointed in the following manner:

“আপনার অবর্তমানে উক্ত আশ্রমের শিষ্যগণের মনোনিত ব্যক্তি সেবায়ত হইয়া এই সম্পত্তি শাষন সংরক্ষণ করিবেন।”

Considering the above facts and circumstances, we consider that the claim of management of the Ashram involves disputed facts which can not be adjudicated under this Rule Nisi. At the same time, before settling this issue payment of compensation money should not be made to secure ends of justice. Thus, we are of the view that the Ashram was created by virtue of deed of Endowment dated 20.6.1938 and so it being a constructive Trust, a Trustee (Sebayet) is required to be appointed settling all disputes by a competent Court of jurisdiction in accordance with section 93 of the Code of Civil Procedure.

Mr. Azim submits that sections 92 or 93 of the Code of Civil Procedure are not applicable because there is no allegation of breach of trust. To appreciate the submission of Mr. Azim, we have examined sections 92 and 93 of the Code of Civil Procedure which run as follows:

“92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the [Attorney General], or two or more persons having an interest in the trust and having obtained the consent in writing of the [Attorney

General], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree-

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) setting a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

93. The powers conferred by sections 91 and 92 on the Attorney General may, be, with the previous sanction of the Government, exercised also by the Collector or by such officer as the Government may appoint in this behalf.”

On a plain reading of the aforesaid provisions, we are unable to accept the submission of Mr. Azim inasmuch as the incorporated provisions, provide amongst others, for appointing a new Trustee. After death of appointed Sebayet, Sachchidananda Tirtha Nath as per deed of Endowment dated 20.06.1938, there is no Trustee at present.

In the above circumstances, since there are disputes as to entitlement to receive the compensation on behalf of the Ashram, the Deputy

Commissioner, Chattogram shall keep the amount of compensation in the public account of the Republic in accordance with section 11(2) of the Act, 2017 and the Deputy Commissioner, Chattogram is directed to do the needful as per the judgment.

With this direction the Rule is disposed of. The Secretary, Ministry of Religious Affairs is directed to take steps either by providing sanction to the Collector, Chattogram or appointing any officer for instituting a suit in accordance with section 93 of the Code of Civil Procedure within 90(ninety) days from the date of receipt of a copy of this judgment and order.

Let a copy of this judgment and order be communicated to the Secretary, Ministry of Religious Affairs and (2) the Deputy Commissioner, Chattogram for their information and necessary action as per the judgment and order.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.