

GAHC010216482024



2026:GAU-AS:15725-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/68/2024

MOHAN CHANDRA MALAKAR AND ANR
SON OF LATE RISHAB CHANDRA MALAKAR,
RESIDENT OF VILLAGE- NO. 1 HAJO,
P.O. AND P.S.- HAJO,
DISTRICT- KAMRUP, ASSAM.

2: TILAK CHANDRA DAS
SON OF LATE UMESH DAS

RESIDENT OF VILLAGE- NO. 1 HAJO

P.O. AND P.S.- HAJO

DISTRICT- KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
ASSAM SACHIVALAYA, GUWAHATI-6.

2: THE DISTRICT AND SESSION JUDGE
KAMRUP(M)
ASSAM
GUWAHATI- 781001.

3: DISTRICT COMMISSIONER
KAMRUP
ASSAM
AMINGAON
GUWAHATI- 781031.

4:CIRCLE OFFICER
HAJO REVENUE CIRCLE
DISTRICT- KAMRUP
ASSAM
PIN -781102.

5:SIBA PRASAD SARMA
DOLOI OF SHREE SHREE HAYAGRIVA MADHAB MANDIR TEMPLE
MANAGING COMMITTEE
HAJO

DISTRICT- KAMRUP
ASSAM
PIN- 781102.
RESIDING AT- HARABALA PATH (OPPOSITE BORA SERVICE)

ULUBARI
GUWAHATI-3.

6:PRESIDENT
PANCHATIRTHA BARDEWRI SAMAJ
HAJO
DISTRICT- KAMRUP
ASSAM
PIN- 781102

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Mr. M.K. Choudhury, Senior Advocate, assisted by Mr. P.P. Dutta and Ms. P. Sarma, Advocates.

For the Respondent(s) : Ms. N. Bordoloi, Standing Counsel, Revenue and Disaster Management Department for respondent No.1.

: Ms. D. Mahanta, Advocate on behalf of Mr. H. K. Das, Senior Advocate/Standing Counsel, Gauhati High Court for respondent No. 2.

: Ms. M. Bhattacharjee, Additional Senior Government Advocate, Assam for respondent Nos. 3 & 4.

Date on which judgment
is reserved : 09.10.2026.

Date of pronouncement
of judgment : **15.10.2026.**

Whether the pronouncement
is of the operative part
of the judgment ? : **No.**

Whether the full judgment
has been pronounced : **Yes.**

JUDGMENT & ORDER (CAV)

(K. Goswami, J)

We have heard Mr. M.K. Choudhury, learned Senior Advocate, assisted by Mr. P.P. Dutta and Ms. P. Sarma, learned Advocates for the petitioners; Ms. N. Bordoloi, learned Standing Counsel, Revenue and Disaster Management Department for respondent No. 1; Ms. D. Mahanta, learned Advocate, appearing on behalf of Mr. H. K. Das, learned Senior Advocate/Standing Counsel, Gauhati High Court for respondent No. 2 and Ms. M. Bhattacharjee, learned Additional Senior Government Advocate for respondent Nos. 3 & 4.

2] The instant Public Interest Litigation has been filed under Article 226 of the Constitution of India questioning the failure on the part of the respondent authority in taking appropriate steps to manage the affairs of the Hayagriva Madhab Temple, Hajo (hereinafter referred to as the "Hajo temple"). The petitioner, *inter alia*, puts to challenge the orders dated

24.04.2013 (Annexure-14) and 25.03.2014 (Annexure-17) passed by the Deputy Commissioner, Kamrup, Amingaon, wherein he refused to constitute the Managing Committee of the Hajo temple under the provision of Section 25-A of the Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 and to take over the management of the said Hajo temple thereof.

3] The petitioners, who are the local residents of the Hajo area, contend that the management of the Hajo temple is governed by a scheme settled pursuant to the judgment and decree dated 09.11.1908 passed in Title Suit No. 3 of 1904. They further contend that, following the enactment of Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 (hereinafter referred to as the “1959 Act”), the management of religious or charitable institutions receiving annuities from the Government became subject to the constitution of a Managing Committee under Section 25-A of the said Act, headed by the Deputy Commissioner.

According to the petitioners, the existing management scheme, founded on the decree of 1908, has become outdated and is no longer legally sustainable in view of the subsequent statutory enactment. It is in this backdrop that the present public interest litigation has been instituted, seeking a direction for the constitution of a Managing Committee in accordance with Section 25-A of the 1959 Act and for ensuring the proper management and administration of the Hajo temple and its endowments.

4] Having heard the learned counsel appearing for the parties and

upon perusal of the materials available on record, it appears that the issue to be determined in the instant PIL is whether the earlier scheme settled by the Civil Court is to be superseded by a Managing Committee constituted under Section 25-A of the 1959 Act.

Section 25-A of the 1959 Act, inserted by the Assam Act No. XIX of 1987, provides for the constitution of a Managing Committee for religious or charitable institutions of a public nature to have a control over the matter of utilisation of the annuity and verification of the proper maintenance of the Institution.

5] Section 2(h) of the said Act defines “Religious or Charitable Institutions of Public Nature” as follows:

“(h) Religious or Charitable Institutions of Public Nature’ shall include Satras, Maths, Public Temples, Public Wakf (that is to say, Wakfs other than Wakf-alal-aulad) including Public Mosques and Durgahs, Gurudwaras, Churches or similar institutions or endowments for public purposes of charitable or religious nature.”

6] Section 25-A of the 1959 Act provides for the constitution of a Managing Committee in the following terms: -

“25-A. Constitution of the Managing Committee.- For each of the Religious or Charitable Institution of Public Nature, a Managing Committee shall be constituted with the following members to have' a control over the matter of utilisation of the annuity and verification of the proper maintenance of the Institution-

- a) The Deputy Commissioner or Sub-Divisional officer or his nominee President;*
- (b) An Ex-Officio Secretary to be elected by the Deuries/Bor Deuries;*
- (c) 5 (five) elected members to be elected from amongst the devotees.*

The term of the Committee shall be for three years from the date of

its constitution]”

7] A conjoint reading of the aforesaid provisions indicates that the Managing Committee contemplated under Section 25-A is intended to exercise control over the utilisation of the annuity payable to the religious or charitable institution and to verify the proper maintenance of the institution, including the maintenance and verification of accounts relating to such funds. The provision was introduced to ensure proper financial management, accountability and transparency in the utilisation of public funds. However, the constitution of such a statutory committee does not, by itself, confer upon it general or unrestricted authority over every aspect of the affairs and management of the temple.

8] In ***Riju Prasad Sarma & Ors. -Vs- State of Assam & Ors. :: (2015) 9 SCC 461***, the Apex Court clarified the scope and ambit of Section 25-A of the 1959 Act and held that the powers of the Managing Committee constituted thereunder are limited to the matters specified in the provision. The Apex Court held that the statutory committee cannot assume unrestricted control over the affairs of a temple or override established customary rights beyond the scope of the statute. The relevant observations of the Apex Court in the afore-noted case are reproduced hereinbelow: -

“28. It appears that at least for a brief period the District Judge, the District Administration as well as the High Court had acted under misconception and confusion to equate the limited supervisory role of the statutory Committee under Section 25A of the Act with the rights of the Bordeoris and their representative, the Dolois to manage the religious as well as secular activities of the Kamakhya Temple, a public religious institution.

29. *The scope and amplitude of Section 25A was wrongly not touched upon by the learned Single Judge. The earlier Division Bench Judgment had merely affirmed the constitutionality of this provision at the instance of another religious institution but had no occasion to weigh the powers of the statutory Committee vis-à-vis the customary rights of Bordeori Samaj and its elected representatives, the Dolois. The Division Bench, therefore rightly examined the width and scope of powers of customary trustees – The Bordeories and their elected agent, the Dolois considering all the relevant materials and custom, it committed no error in upholding their right to take care of management of secular as well as religious affairs of the Kamakhya Temple.*

30. *The powers of the Bordeories and Dolois has not been taken away or adversely affected by the Act as it stood earlier or even after Section 25A was inserted. The reasons and objects of introducing the statutory Committee under Section 25A as noted by the Division Bench in paragraph 111 of the judgment under appeal and extracted earlier in this judgment categorically clarify that it was (i) ‘to have control over the annuity’ and (ii) ‘to verify and audit the accounts to the satisfaction of the concerned authority.’ The statutory Committee under Section 25A is therefore concerned only with the annuity payable or paid under the Act to the Head of the Institution and not with its ownership or management. The words – ‘..... and verification of the proper maintenance of Institution.’ in Section 25A have to be understood in the background of all other provisions of the Act including the objects and reasons for the Amending Act No. XIX of 1987. In that light, the power of the Committee is indeed quite limited to verification of the proper maintenance of accounts of the Institution concerned and that too relating only to utilization of the annuity and other government grants under the Act, if any. Favoursing the statutory Committee with powers to manage or oversee even only the secular aspect of management of the Institution will not only run counter to the objects and reasons for the Amending Act of 1987, it shall create an undesirable diarchy when the Act does not divest the Bordeories and Dolois of their customary powers, roles and rights. Hence we have no difficulty in accepting the contention of most of the parties that Section 25A postulates a Committee with limited role - only to exercise control over annuity and other grants under the Act and its proper accounting, if and when utilized, through the power of verification of relevant accounts for proper maintenance of Institutions.”*

9] Viewed in this light, the Managing Committee constituted under Section 25-A of the 1959 Act has a limited statutory role, confined to supervising the utilisation of the annuity and other Government grants payable under the Act and verifying the relevant accounts to ensure proper financial management and maintenance of the institution. The said provision does not, in the absence of any express provision or necessary statutory implication to that effect, have the effect of displacing the existing customary rights or transferring the entire management and administration of the institution to the statutory Managing Committee.

10] In the present case, the Hajo temple in question is a religious institution of a public nature and is in receipt of annuity from the State Government. Accordingly, the provisions of Section 25-A of the 1959 Act are attracted to the extent of the matters contemplated therein.

11] It appears from the materials on record that, as far back as in the year 1904, the Shebaitis of the Hajo temple instituted Title Suit No. 3 of 1904 before the learned District Court, alleging, *inter alia*, misappropriation of temple properties by the then *Doloi*. By judgment and decree dated 09.11.1908, the learned District Court, upon finding that the temple required improvement and was not being managed as satisfactorily as they ought to have been, settled a scheme for the management and administration of the temple. The said scheme was subsequently approved by the High Court, subject to the incorporation of a provision empowering the District Court to modify the scheme. Thereafter, an appeal arising out of the proceedings was disposed of by

the High Court of Judicature at Fort William in Bengal, by order dated 17.03.1917, on the basis of a settlement arrived at between the contesting parties, whereunder the scheme was finally settled. The said scheme continued to govern the management of the temple, subject to such subsequent modifications as were made by the competent court from time to time.

12] Subsequently, following the insertion of Section 25-A into the Act, a socio-cultural organisation submitted a representation dated 12.07.2012 before the jurisdictional Deputy Commissioner, seeking implementation of the said provision in respect of the Hajo temple and constitution of the statutory Managing Committee under the supervision of the competent authority.

13] However, by the impugned orders dated 24.04.2013 and 25.03.2014, the jurisdictional Deputy Commissioner declined to take over the management of the said Hajo temple in view of the decree passed in Title Suit No. 3 of 1904 and the subsisting scheme of management framed by the Civil Court and to constitute the Managing Committee under Section 25-A of the 1959 Act thereof.

14] Upon consideration of the statutory provisions and the principles laid down by the Apex Court in ***Riju Prasad Sarma*** (supra), it is evident that the existence of a scheme of management framed by a Civil Court does not, by itself, dispense with the statutory obligation to constitute a Managing Committee under Section 25-A of the Act in respect of a qualifying religious or charitable institution receiving annuity under the

Act.

15] The statutory committee contemplated under Section 25-A is not intended to take over the entire management of the Hajo temple or to displace the subsisting scheme of management or any customary rights recognised by law. Its role is confined to exercising control over the utilisation of the annuity and other government grants, if any, payable under the 1959 Act, and to verifying the relevant accounts to ensure proper financial management and maintenance of the institution.

16] In view of the aforesaid, the existence of the Civil Court's scheme cannot, in itself, constitute a sufficient ground for the respondent authorities to decline the discharge of their statutory obligations under Section 25-A. The competent authority is required to take appropriate steps for constitution of the statutory Managing Committee in accordance with the provisions of the 1959 Act, while ensuring that such constitution and functioning remain within the limited statutory mandate and do not interfere with the subsisting scheme of management or lawful customary rights beyond what the Act permits.

17] Accordingly, the impugned orders dated 24.04.2013 and 25.03.2014 passed by the Deputy Commissioner, Kamrup, Amingaon, to the extent of not taking steps for constitution of the statutory Managing Committee, are liable to be interfered with. Ordinarily, it is not for this Court to issue a direction requiring the State to perform a statutory function. However, having regard to the failure of the respondent authorities to act in accordance with the mandate of Section 25-A of the 1959 Act and

considering the issues of public importance raised in the present Public Interest Litigation, we are of the considered view that appropriate directions are warranted to ensure compliance with the statutory provisions.

18] It is, accordingly, directed that the respondent authorities, more particularly the District Commissioner, Kamrup, Amingaon, shall constitute the Managing Committee for Hayagriva Madhab Temple, Hajo, in terms of Section 25-A of the 1959 Act, within a period of 1 (one) month from the date of receipt of a certified copy of this order. It is, however, clarified that the constitution of such Managing Committee shall not, by itself, render the earlier scheme framed by the Civil Court inoperative or have the effect of superseding the same in its entirety. The said scheme shall continue to operate to the extent that it remains legally in force, unless modified or set aside by a competent Court. In the event of any inconsistency between the provisions of the earlier scheme and any mandatory provision of the Act, the latter shall prevail to the extent of such inconsistency.

19] With the aforesaid observations and directions, the instant PIL stands disposed off.

JUDGE

CHIEF JUSTICE

Comparing Assistant

Pranab
Chandra
a Das

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by Pranab
Chandra Das
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