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SLP(C)No. 3966 OF 2001
ITEM No.201

Court No. 5

SECTION XVI
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.3966/2001

(From the judgement and order dated 27/11/2000 in SA 521/99
of The HIGH COURT OF CALCUTTA)

DURGAMATA THAKURANI

Petitioner (s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent (s)

(With prayer for interim relief & office report)
(For Final Disposal)

Date : 28/11/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s)Mr. Rana Mukherjee, Adv.
Mr. Siddharth Gautam, Adv. for
Mr. Goodwill Indeevar,Adv.

For Respondent (s)Mr. Avijit Bhattacharjee,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed and disposed of in terms of the signed order. No costs.

(D.L.Chugh) (Vijay Aggarwal)
Court Master Court Master

signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9452 OF 2003
(Arising out of SLP(C) No.3966 of 2001)

Durgamata ThakuraniAppellant(s)

versus

State of West Bengal & Ors. Respondent(s)

O R D E R

Leave granted.

The above appeal has been filed against the judgment and decree dated 27.11.2000 passed in Second Appeal No.521 of 1999 by the Division Bench of the High Court of Calcutta whereunder the second appeal came to be dismissed with an observation that in view of the concurrent findings of the courts below that the suit property stands in the name of Gouri Prasad Roy in the land record and not in the name of Public Debutter no case had been made in the appeal for issuing notice. Consequently the appeal as indicated above came to be dismissed in limine.

While issuing notice in special leave petition on 19.3.2001 this Court passed the following order:

"Issue notice. The notice shall state that the matter may be disposed of at the SLP stage by setting aside the order under challenge and restoring the second appeal to the file of the High Court to be heard and disposed of on merits."

The respondents have entered appearance and filed their response. The learned counsel appearing on either side have been heard.

The learned counsel for the respondents vehemently contends that there is no substantial question of law raised for the High Court to decide the matter and consequently the inlimine rejection of the second appeal is well merited and does not call for interference.

On a careful consideration of the materials on record we are of the view that an important question does really arise for consideration in this case as to whether the properties are debutter properties belonging to the deity concerned or that it is the private property of late Gouri Pd. Roy who was doing service and conducting worship of the deity. The earlier compromise decree of 1944 relating to the property and its impact require consideration. In matters of such nature the courts should not overlook the fact that the properties of the deity requires to be protected if it is found to be so, since courts are supposed to be having 'custodia legis' of all debutter property and courts have always shown much interest as anyone else in ensuring the restoration of the property/ temple concerned if it is in unlawful possession of somebody else. It is also well settled that mere entries in revenue records is no proof of title, perse and the same has to be considered, by taking into account all relevant materials. On the other hand, as rightly contended by the learned counsel for the appellants the summary dismissal inlimine of the second appeal does not, in our view, befit the seriousness of the issues raised.

Consequently the judgment under challenge is set aside and the proceedings are remitted to the High Court. Before the High Court the counsel for the appellants shall formulate the necessary substantial questions of law on the basis of which the court shall consider the issues, as it may deserve in accordance with law. Except indicating the manner of consideration required, we are not to be taken to have allowed and expressed any opinion on the merits of the claims of parties as such, which the High Court shall go into independently. With the above observations this appeal stands allowed and disposed of on the above terms. No costs.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)

New Delhi,
November 28, 2003