IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 20th OF JUNE, 2025

SECOND APPEAL No. 131 of 2006

BABULAL AND OTHERS

Versus

MANDIR SHITLA MATA, LOCAL LEGISLATIVE AND OTHERS

Appearance:

Shri Yashwant Rao Dixit- Advocate for appellants.

None for respondents.

JUDGMENT

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 12.12.2005 passed by Additional District Judge, Chachoda, District Guna (M.P.) in Civil Appeal No.32A/2002 as well as judgment and decree dated 10.10.2002 passed by Civil Judge Class I, Chachoda, District Guna (M.P.) in Civil Suit No.807A/1996.

2. Appellants are the plaintiffs who have lost their case from both the courts below.

3. Facts necessary for disposal of the present appeal, in short, are that the appellants filed a suit for declaration of title and possession. It is their case that one Sheetla Mata Mandir is situated in village Kumbhraj. Harishankar and

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plaintiff No.1 were Pujaris and were offering prayers in the temple. Before abolition of Zamindari rights the erstwhile Zamindar had given Survey No.507 area 3.993 hectares of land to the plaintiffs for cultivation purposes. Plaintiff No.1 and Harishankar remained in cultivating possession and were offering prayers. After the abolition of Zamindari rights, the State Government became the owner of the land in dispute but Harishankar and plaintiff No.1 continued to cultivate the land without payment of any land revenue. Thereafter, a land revenue to the tune of Rs.17.75 was fixed which was regularly paid by the plaintiffs. In Samvat 2007 & 2008 the names of Harishankar and plaintiff No.1 were recorded as agriculturists. In Samvat 2010, their names were recorded as *Pakka Krishak*. Thereafter, in Samvat 2012, the name of Ramlal was recorded. The name of Ramlal continued in revenue records till Samvat 2022. Thereafter, Ramlal again alienated the property to Puniyabai who is the mother of plaintiffs and accordingly in the year 1967, the mutation in the name of Puniyabai was accepted and she was recorded as Bhumiswami. It was pleaded that although in Samvat 2012, the name of Ramlal was recorded as *Pakka Krishak* but the possession remained with the mother of plaintiffs. The mother of the plaintiffs was widow and plaintiff No.1 and Harishankar were minor and therefore Ramlal could not have acquired any rights of *Krishak*. Thus, it was claimed that Puniyabai who is the mother of plaintiffs was the real owner. In the settlement proceedings which took place in Samvat 2014, the disputed property was renumbered as Khasra No.507. It was pleaded that the intention of defendant No.3 was dishonest and right from the very beginning was making an effort to snatch the property from Puniyabai and accordingly an application was filed before the Registrar, Public Trusts Act, by projecting that the property in dispute is the property of public trust. Accordingly, defendant No.2 registered

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the temple as a public trust and now the temple as well as the land is in possession of the trustees. It was pleaded that plaintiff No.1 is the Peon and while deciding the question of registration of trust defendant No.2 had no right to decide the rights of the plaintiffs. The suit property was never the property of temple and it was wrongly included in the property of the public trust. The plaintiffs No.1 and 2 have equal share in the property. Defendants No.3 to 10 have been impleaded being the trustees. Till the suit property was registered as public trust, the property in dispute remained in possession of Puniyabai and after her death, the plaintiffs had remained in possession. After the registration of property as public trust, the defendants have taken possession of the property without any authority of law. The decision taken by defendant No.2 to declare the property as a public trust was without jurisdiction having no adverse effect on the rights and title of the plaintiffs. It was claimed that now the defendants are out and out to alienate the property and accordingly they have sought permission from Collector by making application on 21.03.1983. It was pleaded that in case if the property is alienated, then it would cause further complication. The cause of action arose on 18.05.1982 when the plaintiffs came to know about the registration of the property as public trust and accordingly, the suit was filed for declaration of title and possession.

4. The defendants filed their written statement and admitted that Sheetla Mata temple is situated in Kumbhraj but it was denied that plaintiff No.1 was appointed as Pujari. It was claimed that after the abolition of Zamindari rights neither the Zamindar had appointed the plaintiffs as Pujari nor Zamindar had any right or title to appoint the plaintiffs as Pujari. No honourarium was ever paid to plaintiffs. It was claimed that the reality is that plaintiffs had worked as a labourer and had carried out the cleaning/painting work in the temple. The

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plaintiffs who were the members of Jogi society were not eligible to be appointed as Pujari. Only Bramhan could have been appointed as Pujari. All the plaint averments were denied. It was pleaded that even if the names of plaintiffs were recorded in the revenue record, it would not adversely affect the rights of the defendants or would not confer any title on the plaintiffs or their mother. Till Samvat 2022, the name of Ramlal remained in the revenue records as he, with a mala fide intention, had got his name mutated in the revenue records. Puniyabai had never been in possession of the property in dispute in the capacity of owner. It was pleaded that Ramprasad Khedapati was the ex-Pujari and he and his family members were the real Pujari. After the death of Ramprasad Khedapati, his family members did not take any interest in offering prayer and maintaining the temple and therefore the property started getting dilapidated. Accordingly, a trust was constructed and now the trust is maintaining the temple. It was denied that the trust has illegally taken possession but it was claimed that from 1978-79 the trustees are regularly maintaining the trust and whatever income is derived is being utilized for the maintenance of the temple. With hike in price of the land, the intentions of the plaintiffs got dishonest and accordingly, they have filed the suit. The trust was registered as Public Trust and it was in the knowledge of the plaintiffs and no objection was ever raised.

5. The Trial Court, after framing issues and recording evidence, partially decreed the suit and it was held that the plaintiffs are not the owner of the property in dispute, however, it was found that they are in possession. However, it was declared that the plaintiffs are the *Adhipati Krishak* and accordingly the defendants were directed to hand over the vacant possession of the property back to the plaintiffs, otherwise, the plaintiffs would be entitled to

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recover the possession after getting the decree executed. It was further observed that the aforesaid decree would be applicable to the agricultural land only and would not be applicable to Sheetla Mata Temple or other shops and defendant No.10 was directed to make the re-entry in the revenue record which was prevailing prior to Samvat 2033. It was further held that since the plaintiffs are the *Adhipati Krishak* in the capacity of Pujari, therefore, any order against them can be passed only after following due procedure of law.

6. Being aggrieved by the judgment and decree passed by the Trial Court, plaintiffs preferred an appeal which has been dismissed by judgment and decree dated 12.12.2005 and it has been held that plaintiffs have failed to prove their ownership over the property in dispute.

7. Challenging the judgment and decree passed by the courts below, it is submitted by counsel for appellants that since the plaintiffs were working as Pujari, therefore, they have a title in the temple in dispute and thus has proposed the following substantial questions of law:

> "i- Whether the learned courts below committed the grave illegality in ignoring the documents Ex-P/8 to P/11 which are the relevant of adjudication of rights being revenue entries of period prior to Zamindari Abolition?
>
> ii- Whether in the light of entry made in the revenue record Ex-P/8 to P/11 occupancy tenant right and thereafter right of Bhumi Swami accrued?
>
> iii- Whether merely because any subsequent entry land has been recorded as government land right which is accrued by virtue of Abolition of Zamindari and by virtue of Abolition of law can be extinguished?
>
> iv-Whether the learned courts below committed the grave illegality in dismissing the suit with regard to declaration of Bhumi Swami

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> right by ignoring only relevant entries which are necessary for adjudication of such right?
>
> v-Whether the learned courts below committed the grave illegality in ignoring the provision of section 158 and section 185 of M.P. Land Revenue Code?
>
> vi-Whether merely by the order of collector of recording the land as government land right of plaintiffs can be extinguished particularly when the entry of land in the name of trust has been held as illegal?
>
> vii-Whether the finding of the learned courts are not sustainable as same has been passed ignoring the provision of Kavayad Mafidaran Jujbearaji as well as Mafi Inamdar Tenancy Protection Act?"

8. Heard learned counsel for the appellants.

9. It is the case of the appellants that plaintiff No.1 and Harishankar were appointed as Pujari and therefore they are the owner of the temple and the land appurtenant thereto.

10. Now, the only question for consideration is as to whether the Pujari can be treated as the owner of the temple or not?

11. The aforesaid question is no more *res integra*.

12. The Supreme Court in the case of **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das,** reported in **(2020) 1 SCC 1** has held as under :

> **156.** The recognition of the Hindu idol as a legal or "juristic" person is therefore based on two premises employed by courts. The first is to recognise the pious purpose of the testator as a legal entity capable of holding property in an ideal sense absent the creation of a trust. The second is the merging of the pious purpose itself and the idol which embodies the pious purpose to ensure the fulfilment of the pious purpose. So conceived, the Hindu idol is a legal person. The property endowed to the pious purpose is owned by the idol as a legal person in an ideal sense. The reason why the court created such legal fictions

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was to provide a comprehensible legal framework to protect the properties dedicated to the pious purpose from external threats as well as internal maladministration. Where the pious purpose necessitated a public trust for the benefit of all devotees, conferring legal personality allowed courts to protect the pious purpose for the benefit of the devotees.

* * * *

425. Courts recognise a Hindu idol as the material embodiment of a testator's pious purpose. Juristic personality can also be conferred on a *Swayambhu* deity which is a self-manifestation in nature. An idol is a juristic person in which title to the endowed property vests. The idol does not enjoy possession of the property in the same manner as do natural persons. The property vests in the idol only in an ideal sense. The idol must act through some human agency which will manage its properties, arrange for the performance of ceremonies associated with worship and take steps to protect the endowment, inter alia by bringing proceedings on behalf of the idol. The shebait is the human person who discharges this role.

* * * *

Pujaris

435. A final point may be made with respect to shebaits. A pujari who conducts worship at a temple is not merely, by offering worship to the idol, elevated to the status of a shebait. A pujari is a servant or appointee of a shebait and gains no independent right as a shebait despite having conducted the ceremonies for a long period of time. Thus, the mere presence of pujaris does not vest in them any right to be shebaits. In *Gauri Shankar* v. *Ambika Dutt*, the plaintiff was the descendant of a person appointed as a pujari on property dedicated for the worship of an idol. A suit was instituted for claiming partition of the right to worship in the temple and a division of the offerings. A Division Bench of the Patna High Court held that the relevant question is whether the debutter appointed the pujari as a shebait. Ramaswami, J. held : (SCC OnLine Pat para 7)

> "*7.* … It is important to state that a pujari or archak is not a shebait. A pujari is appointed by the Shebait as the purohit to conduct the worship. But that does not transfer the rights and obligations of the Shebait to the purohit. He is not entitled to be continued as a matter of right in his office as pujari. He is

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> merely a servant appointed by the Shebait for the performance of ceremonies. Where the appointment of a purohit has been at the will of the founder the mere fact that the appointees have performed the worship for several generations, will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priest."

436. A shebait is vested with the authority to manage the properties of the deity and ensure the fulfilment of the purpose for which the property was dedicated. As a necessary adjunct of this managerial role, a shebait may hire pujaris for the performance of worship. This does not confer upon the appointed pujaris the status of a shebait. As appointees of the shebait, they are liable to be removed from office and cannot claim a right to continue in office. The distinction between a shebait and a pujari was recognised by this Court in *Sree Sree Kalimata Thakurani of Kalighat* v. *Jibandhan Mukherjee*. A suit was instituted under Section 92 of the Code of Civil Procedure, 1908 for the framing of a scheme for the proper management of the seva-puja of the Sree Sree Kali Mata Thakurani and her associated deities. A Constitution Bench of this Court, speaking through J.R. Mudholkar, J. held : (AIR p. 1333, para 10)

> "*10.* … It is wrong to call shebaits mere pujaris or archakas. A shebait as has been pointed out by Mukherjea, J. (as he then was), in his Tagore Law Lectures on *Hindu Law of Religious and Charitable Trusts*, is a human ministrant of the deity while a pujari is appointed by the founder or the shebait to conduct worship. Pujari thus is a servant of the shebait. Shebaitship is not mere office, it is property as well."

437. A pujari is appointed by the founder or by a shebait to conduct worship. This appointment does not confer upon the pujari the status of a shebait. They are liable to be removed for any act of mismanagement or indiscipline which is inconsistent with the performance of their duties. Further, where the appointment of a pujari has been at the will of the testator, the fact that appointees have performed the worship for several generations does not confer an independent right upon the appointee or members of their family and will not entitle them as of right to be continued in office as

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priests. Nor does the mere performance of the work of a pujari in and of itself render a person a shebait.

An exclusive right to sue?

438. The position of a shebait is a substantive position in law that confers upon the person the exclusive right to manage the properties of the idol to the exclusion of all others. In addition to the exclusive right to manage an idol's properties, the shebait has a right to institute proceedings on behalf of the idol. Whether the right to sue on behalf of the idol can be exercised only by the shebait (in a situation where there is a shebait) or can also be exercised by the idol through a "next friend" has been the subject of controversy in the proceedings before us. The plaintiff in Suit No. 3, Nirmohi Akhara contends that the Nirmohis are the shebaits of the idols of Lord Ram at the disputed site. Mr S.K. Jain, learned Senior Counsel appearing on behalf of Nirmohi Akhara, urged that absent any allegation of maladministration or misdemeanour in the averments in the plaint in Suit No. 5, Devki Nandan Agarwal could not have maintained a suit on behalf of the idols as a next friend. Mr Jain placed significant reliance on the contention that the plaint in Suit No. 5 does not aver any mismanagement by the Nirmohis. Mr S.K. Jain urged that though the plaintiffs in Suit No. 5 (which was instituted in 1989) were aware of Suit No. 3 which was instituted by Nirmohi Akhara (in 1959) claiming as a shebait, the plaint in Suit No. 5 does not challenge the position of Nirmohi Akhara as a shebait. Consequently, Nirmohi Akhara urged that a suit by a next friend on behalf of the idol is not maintainable.

* * * *

483. The protection of the trust property is of paramount importance. It is for this reason that the right to institute proceedings is conceded to persons acting as managers though lacking a legal title of a manager. A person claiming to be a de facto shebait can never set up a claim adverse to that of the idol and claim a proprietary interest in the debutter property. Where a person claims to be the de facto shebait, the right is premised on the absence of a person with a better title i.e. a de jure manager. It must be shown that the de facto manager is in exclusive possession of the trust property and exercises complete

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control over the right of management of the properties without any hindrance from any quarters. The person is, for all practical purposes, recognised as the person in charge of the trust properties. Recognition in public records as the manager would furnish evidence of being recognised as a manager.

484. Significantly, a single or stray act of management does not vest a person with the rights of a de facto shebait. The person must demonstrate long, uninterrupted and exclusive possession and management of the property. What period constitutes a sufficient amount is determined on a case-to-case basis. The performance of religious worship as a pujari is not the same as the exercise of the rights of management. A manager may appoint one or several pujaris to conduct the necessary ceremonies. In the ultimate analysis, the right of a person other than a de jure trustee to maintain a suit for possession of trust properties cannot be decided in the abstract and depends upon the facts of each case. The acts which form the basis of the rights claimed as a shebait must be the same as exercised by a de jure shebait. A de facto shebait is vested with the right to institute suits on behalf of the deity and bind its estate provided this right is exercised in a bona fide manner. For this reason, the court must carefully assess whether the acts of management are exclusive, uninterrupted and continuous over a sufficient period of time.

* * * *

508.....As held above, a stray or intermittent exercise of management rights does not confer upon a claimant the position in law of a de facto shebait.

13. The Supreme Court in the case of **State of M.P. v. Pujari Utthan Avam Kalyan Samiti,** reported in **(2021) 10 SCC 222** has held as under :

23. This question has already been considered by the courts in *Panchamsingh*, which has further been affirmed by *Kanchaniya*. The law is clear on the distinction that the Pujari is not a Kashtkar Mourushi i.e. tenant in cultivation or a government lessee or an ordinary tenant of the muafi lands but holds such land on behalf of the Aukaf Department for the purpose of management. The Pujari is only

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a grantee to manage the property of the deity and such grant can be reassumed if the Pujari fails to do the task assigned to him i.e. to offer prayers and manage the land. He cannot be thus treated as a Bhumiswami. The *Kanchaniya* further clarifies that the Pujari does not have any right in the land and his status is only that of a manager. Rights of pujari do not stand on the same footing as that of Kashtkar Mourushi in the ordinary sense who are entitled to all rights including the right to sell or mortgage.

24. In a judgment reported as *Ramchand* v. *Janki Ballabhji Maharaj*, it was held that if the Pujari claims proprietary rights over the property of the temple, it is an act of mismanagement and he is not fit to remain in possession or to continue as a Pujari.

25. The contrary view expressed by the High Court in *Ghanshyamdas (1)*, *Sadashiv Giri* and *Shrikrishna* does not lay down good law in view of binding precedent of the Division Bench of the High Court in *Panchamsingh* as also of this Court in *Kanchaniya*. All these judgments presenting a contrasting view had not noticed the said binding precedents dealing with the rights of priest under the Gwalior Act.

26. Taking into consideration the past precedents, and the fact that under the Gwalior Act, Pujari had been given the right to manage the property of the temple, it is clear that that does not elevate him to the status of Kashtkar Mourushi (tenant in cultivation).

27. The ancillary question which arises is whether the priest is Inamdar or Maufidar within the meaning of Section 158(1)(*b*) of the Code. Such provision contemplates that the rights of every person in respect of land held by him in the Madhya Bharat region i.e. area of erstwhile Gwalior and Holkar as a pakka tenant or as a Muafidar, Inamdar or concessional-holder shall be protected as Bhumiswami. The priest does not fall in any of the clauses as mentioned in Section 158(1)(*b*) of the Code. The muafi was granted to the property of temples from payment of land revenue. Such muafi was not granted to a manager. Even Inam granted by the Jagirdar or the ruler to a priest is only to manage the property of the temple and not confer ownership right on the priest. Therefore, in view of the judgment in *Panchamsingh* and also of this Court in *Kanchaniya*, the priest cannot be treated to be either a Muafidar or Inamdar in terms of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act 66 of

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1950) or in terms of the Gwalior Act. Since the priest cannot be treated to be Bhumiswami, they have no right which could be protected under any of the provisions of the Code.

14. This Court in the case of **Mandir Murti Shri Radha Vallabh Ji through its Pujari Bhawani Shankar Vs. State of M.P. by order dated 1-7-2020 passed in W.P. No. 7987 of 2020** has held as under :

> Accordingly, it is held that Pujari has no locus standi or say in the management of the temple property and thus they have no right to file a writ petition on behalf of the public trust or on behalf of Deity. Further, there is nothing on record to suggest that the property belongs to a public trust. Further no authorization to file the writ petition by the Pujari on behalf of the said public trust has been placed on record.

Thus, it is clear that the Pujari cannot be the owner of the property belonging to the temple and in fact the deity is the owner of the property belonging to the temple. Therefore, the basic contention of the plaintiffs that they are the owner of the property in dispute being Pujari is misconceived.

15. Furthermore, there is another aspect of the matter. Section 8 of M.P. Public Trusts Act, 1951, reads as under:

> **8. Civil suit against the finding of the Registrar.**
>
> (1) Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar under Section 6 may, within six months from the date of the publication of the notice under sub-section (1) of Section 7, institute a suit in a Civil Court to have such finding set aside or modified.
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> (2) In every such suit, the Civil Court shall give notice to the State Government through the Registrar, and the State Government, if it so desires, shall be made a party to the suit.

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(3) On the final decision of the suit, the Registrar shall, if necessary, correct the entries made in the register in accordance with such decision.

16. In the present case, the Public Trust was registered under Section 6 of M.P. Public Trusts Act, 1951. If the plaintiffs were aggrieved by the said entry made by the Registrar in the register thereby registering the temple as a public trust, then they should have filed a Civil Suit under Section 8 of M.P. Public Trusts Act, 1951 within six months from the date of publication of the notice under sub-section (1) of Section 7 for setting aside the findings. No such suit was filed.

17. No other arguments to substantiate the proposed Substantial Questions of Law were advanced.

18. Considering the totality of the facts and circumstances of the case, this Court is of considered opinion that no substantial question of law arises in the present appeal.

19. *Ex. Consequenti*, the appeal fails and is hereby ***dismissed***.

(G. S. AHLUWALIA)
JUDGE

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