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**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

**Gwalior, Dated :20/06/2019**

Shri B.S. Dhakad, Advocate for petitioner.

Shri R.K. Soni, Government Advocate for respondent/State.

This petition under Article 227 of the Constitution of India has been filed against the order dated 3/11/2018 and 4/4/2019 passed by Additional Commissioner, Gwalior Division, Gwalior in Appeal No.137/17-18 and Review No.14/2019-20 respectively.

2. The necessary facts for disposal of the present petition in short are that in old Shivpuri a temple known as Shri Radhakrishna Ji is situated in survey nos.176, 177, 178, 179, 180, 182, 223, 224, 225, 226, 227, 229, 233, 238, 239, 254, 256, 299, 233, 525, 526, 1554, 1579, 1580 and 1581 total area 19.16 hectare. It is submitted that the temple is situated on a Muafi land and the management of the same was handed over by the government to its Pujari. Intention of the State Government for handing over the agricultural land to the Pujari was that the Pujari of the temple should either himself cultivate the land or may get it cultivated by somebody else, so that he can meet out the expenses of maintenance of temple from its income. Earlier one Shri Gangadhar Yashwant Rao Shekdar was appointed as Pujari of the temple and after his death, Smt. Sita Bai W/o Shri Ramchandra Shekdar was appointed as Pujari of the temple and her name was also

**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

mutated in the revenue record and after her death, Shri Sudhakar Rao was appointed as Pujari of the said temple. Shri Sudhakar Rao expired on 29/1/2007 and after his death, Smt. Prabhavati Rao, who is wife of Sudhkar Rao, filed an application for her appointment as Pujari of the temple. The application was considered after conducting an enquiry and accordingly, by order dated 18/10/2017 Smt. Prabhavati Rao has been appointed as Pujari of the said temple. It is also mentioned in the writ petition that after the death of Sudhakar Rao and till the order dated 18/10/2017 was passed, Smt. Prabhavati was continuously performing her duties of Pujari and she was managing the movable and immovable properties belonging to the temple. It is further submitted that since Smt. Prabhavati is a widow lady and was all the time involved in performing Puja and, therefore, she was unable to cultivate the land belonging to the temple and, therefore, a part of the land was given to the petitioner as well as to other persons to cultivate the land of the temple and the petitioner and other similarly situated persons were allowed to take their share in the crops in the form of their labour charges. Meanwhile, the Tahsildar initiated the proceedings under Section 248 of the M.P. Land Revenue Code against the petitioner on the ground that the petitioner is in an unauthorized possession of the Muafi land and by

**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

ignoring the fact that in fact Smt. Prabhavati is in possession of the Muafi land and certain land was given by her to the petitioner for the purposes of cultivation. It is submitted that the Tahsildar by order dated 20/4/2017 imposed a fine of Rs.31,150/- as well as for removal of the encroachment. Being aggrieved by the order of the Tahsildar the petitioner filed an appeal which too has been dismissed by the SDO (Revenue) Shivpuri the petitioner filed an appeal before the Additional Commissioner, Gwalior Division Gwalior and the appeal filed by the petitioner was dismissed by order dated 3/11/2018. Thereafter, the petitioner filed a review application which too has been dismissed by the Additional Commissioner, Gwalior Division Gwalior by order dated 4/4/2019.

3. It is submitted by the counsel for the petitioner that in fact he has not encroached upon the land belonging to the temple, but in fact it was given on Adhiya by Smt. Prabhavati Shekdar and the petitioner after taking his share in the crop by way of labour charges used to give the same to Smt. Prabhavati Shekdar and in fact Smt. Prabhavati Shekdar was in possession of the Muafi land by virtue of her appointment as Pujari of the land. It is further submitted that the Pujari of the land belonging to the petitioner is the Manager of the land belonging to the temple and, therefore, the authorities have

**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

wrongly passed an order of removal as well as have wrongly imposed the fine by the impugned order. It is further submitted that the Supreme Court in the case of **Mst. Kanchaniya and others vs. Shiv Ram and others** reported in **AIR 1992 SC 1239** has held that Pujari is the Manager of property belonging to temple. It is further submitted that the petitioner was not granted opportunity to cross examine the witnesses, therefore, the principles of natural justice has been violated.

4. Heard learned counsel for the parties.

5. It is the case of the respondents that the petitioner has encroached upon the Muafi land belonging to the temple. The Collector is the Manager of the temple.

6. The Supreme Court in the case of **Shri Ram Mandir, Indore Vs. State of M.P. and others** by judgment dated 27/2/2019 passed in **Civil Appeal No.5043/2009** has held that the Pujari of a public temple has no right to interfere in the temple properties. It is further held as under:-

23. The Collector was recorded as Manager for the lands of Shri Ram Mandir since the year 1975 and the same was not challenged. According to the respondent-State, the entry of the name of the District Collector as Manager of the temple properties dated 12.04.1974 has been done to curb the mismanagement of the temple properties at the hands of the pujaris. The learned counsel appearing for the State submitted that the

**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

circular dated 12.04.1974 was upheld by the High Court of Madhya Pradesh in Sadashiv Giri and others v. Commissioner, Ujjain and others 1985 RN 371 insofar as it applied to public temples.

**25.** Plaintiff Ram Das himself got the land in the year 1985-86 on lease for Rs.860/- from the Government and in this respect, he has signed on the order sheet in case No.93B/121-85-86. An amount of Rs.600/- was deposited on 31.07.1986. Thereafter, in the year 1986-87, pujari Ram Das got the lease renewed for one year at Rs.860/- out of which he has deposited Rs.460/- on 11.11.1987 for which a receipt has been issued to pujari Ram Das. The fact that the appellant having taken the Mandir lands on lease from the Government clearly shows that the properties were never owned by the pujaris in their individual capacity. Having taken the Mandir property on lease from the Government, the appellant is estopped from denying that the temple properties are under the management and control of the Government. The suit lands have been given in the name of Shri Ram Mandir and few other lands in the name of Ganesh Mandir for the arrangement of pooja, archana, naivedya, etc. for the public temple and the pujari has no right to interfere in the management of these lands as his status is only that of pujari."

(Underline Applied)

Thus, the contention made by the counsel for the petitioner that they were allowed by Smt. Prabhavati Shekdar to cultivate the land on her behalf, cannot be accepted. Furthermore, the proceedings under Section 248 of M.P. Land Revenue Code were initiated prior to the appointment of Smt. Prabhavati Shekdar as Pujari of the temple. Further, since the Collector is the Manager of the public temple, therefore, neither the petitioner nor Smt. Prabhavati has any right to

**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

interfere in the management of the property belonging to the temple. The petitioner had also admitted that he is in cultivating possession of the land belonging to the temple, but the only defence taken by him is that he has not encroached upon the said land, but he has been allowed by the Pujari of the temple to cultivate the land on her behalf on Adhiya basis. Under these circumstances, this Court is of the considered opinion that when the petitioner is cultivating the land without any authority from the Manager of the temple (Collector), therefore, the courts below did not commit any mistake in passing the impugned orders under Section 248 of M.P. Land Revenue Code. Even otherwise, in exercise of powers under Article 227 of the Constitution of India this Court cannot interfere with the findings of facts unless and until the same are pointed out to be perverse.

7. So far as the judgment passed by the Supreme Court in the case of **Mst. Kanchaniya (supra)** is concerned, the same does not apply because at present the Pujari is not the Manager of the temple but the Collector is the Manager and, therefore, the Pujari cannot get the temple land cultivated through somebody else, as he is not required to manage the temple.

8. So far as the question of violation of principles of natural justice is concerned, there is no such pleading in the writ petition.

**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

Even in the memo of appeal (Annexure P/5) filed before Commissioner, no such plea was raised. Even order-sheets of the Court of Tahsildar have not been filed to substantiate the submission. Accordingly, in absence of factual foundation, the submission regarding violation of natural justice cannot be accepted.

9. It is further submitted by the counsel for the petitioner that in some of the cases the survey number in possession of the persons is the same, therefore, it is clear that the respondents have wrongly passed the orders of removal. To buttress his contentions the counsel for the petitioner has referred to order dated 20/4/2017 and submitted that according to this order, the petitioner is in possession of 0.33 hectare of land forming part of survey no.238. Similarly, in case No.28/16-17/A-68 (which is the subject matter of Writ Petition No.2911/2019) and case No.31/16-17/A-68 (which is the subject matter of Writ Petition No.2916/2019) it has been mentioned that the persons are in possession of 0.32 hectare of land forming part of survey no.238. Thus, it is clear that for the same land several orders have been passed against several persons.

10. Considered the submissions made by the counsel for the petitioner.

11. It is not the case of the petitioner that the total area of survey

**8**  
**THE HIGH COURT OF MADHYA PRADESH**  
**MP No.2899/2019**  
**Kamar Singh Dhakad Vs. State of M.P.**

no.238 is 0.32 hectare or 0.33 hectare. If a person is in possession of a small portion of the land forming part of one survey number, then it cannot be said that the respondents have passed the orders against several persons in respect of the same land.

12. Accordingly, this petition fails and is hereby **dismissed**.

**Arun\***

**(G.S. Ahluwalia)**  
**Judge**