The High Court of Madhya Pradesh

WP 160/2017 [Mandir Shri Mahadev Ji, Chimak and Ors. vs. State of MP]

WP 161/2017 [Mandir Shri Murli Manohar Ji, Govra and Ors. Vs. State of MP]

WP 524/2017 [Mandir Shri Ram Janki, Anantpeth & Ors. Vs. State of MP]

WP 3353/2019 [Mandir Shri Mahadev Ji and Mandir Shri Janki vs. State of MP]

WP 18724/2019 [Mandir Shri Laman Das Deewan vs. State of MP]
&
WP 17845/2019 [Mandir Shri Mahadevji and Mandir Shri Ram Janki & Ors. Vs. State of MP]

Gwalior, dtd. 24/01/2020

Shri S.K. Jain, Counsel for the Petitioners in all the writ petitions.

Shri H.D. Mishra, Govt. Advocate for the State in all the writ petitions.

Heard finally.

By this common order, **WP 160/2017, WP 161/2017, WP 524/2017, WP 3353/2019, WP 18724/2019 & WP 17845/2019** shall be decided.

(2) For the sake of convenience, the facts of W.P. No.160/2017 shall be taken into consideration.

(3) This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :-

> **"7.**A. That, a direction may kindly be issued against the respondents not to constitute any committee for managing the temples which is contrary to the many direction issued by the Hon'ble High Court;
> B. deleted by order dated 27-2-2017;
> C. That, press note which was illegally published by the Collector Gwalior Annexure P/3 may also be quashed.
> D. Respondent Collector may be directed to implead the name of Pujari in Khasra papers.
> E. Any other relief which is just and proper may also be given;
> F. That, the order (Annexure P-12) passed by the Collector, Gwalior is illegal and contrary to law, hence same may kindly be quashed."

(4) The necessary facts for the disposal of the present petition in short are

that the petitioners claim themselves to be the Pujaris of Mandir Shri Mahadev Ji, Mandir Shri Jayashwar Mahadev Ji, and Mandir Shri Ram Janki and Mandir Shri Hanuman Ji, situated in Gwalior. It is an admitted position that all the three above-mentioned temples are public temples and not private temples of the petitioners/Pujaris. All the three temples have agricultural lands which are adjoining to the temples and it is claimed that the Pujaris of these temples are cultivating those agricultural lands without any interruption and complaint. The details of the land owned by the above mentioned temples are given in Khasra Panchsala annexed as **Annexure P/7.** It is the claim of the Pujaris that their rights to manage the property of the temples have never extinguished and neither the State nor the Collector has any right to interfere in the management of the land nor the name of the Collector can be recorded as Manager of the Temple Property. It is further claimed that the Pujaris of the Public Temple are juristic persons, are entitled to hold the lands belonging to the Public Temple in their own personal names. It is further pleaded that this Court in the case of **Pujari Utthan Evam Kalyan Samiti Vs. State of Madhya Pradesh by order dated 20-11-2013 passed in W.P. No. 2405/2009 (Indore Bench),** which was affirmed by **Division Bench in W.A. No. 617/2004 by order dated 14th day of June 2016,** order passed in the case of **Mandir Shri Murli Manohar Radhakrishan Vs. State of M.P. and others by order dated 12-7-2002 passed in W.P. No.1277 of 2002 (Gwalior Bench)** has held that although the properties of the Public Temple are more secured if they are managed by the Collector, but at the same time, the Collector cannot

manage the property properly, therefore, in order to protect the interest of the Temples and also to protect the interest of the Pujaris who are entitled to get the benefits of the scheme, which are being introduced by the Govt. for the benefits of the agriculturists, the names of the Pujaris should remain recorded in revenue records. Thus, it is claimed that the names of the Pujaris from the Khasra Panchsala cannot be deleted. Thus, the petition has been filed for the above mentioned relief(s). The Counsel for the Petitioner has also relied upon the judgment passed by this Court in the case of **State of M.P. Vs. Mandir Shri Khande Rao** reported in **1999 R.N. 392.**

(5) The State has filed its return and has stated that the Supreme Court in the case of **Shri Ram Janaki Mandir, Indore Vs. State of Madhya Pradesh and others** by order **dated 27 -2-2019** passed in **C.A. No. 5043 of 2009** has held that the Pujaris have no right to manage the property of a Public Temple. Further, it is submitted that by circular dated 21-3-1994, it was directed that the name of the Collector, be mentioned as Manager, and the names of the Pujaris be deleted from the revenue records.

(6) The Petitioners have filed their rejoinder and have stated that the circular dated 21-3-1994 has already been quashed by this Court in the case of **Pujari Utthan Avam Kalyan Samiti and another (Supra).** Further, it is submitted that the law laid down by the Supreme Court in the case of **Shri Ram Janaki Mandir Indore (Supra)** is not applicable to the facts of the case. Further, the Supreme Court in the case of **Kanchaniya Vs. Shivram and others** reported in **AIR 1992 SC 1239** has already settled the rights of the

Pujaris. Further, it is submitted by the Counsel for the petitioners, that while deciding the Writ Appeal filed against the order **dated 12-7-2002** passed in **W.P. No.1277 of 2002** in the case of **Mandir Shri Murli Manohar Radhakrishan Vs. , State of M.P. and others** it has been held as under :

> " Thus, in view of the statement made by the Government Advocate, we dispose of this petition with a direction that the appellant's name can be mentioned in column no. 12 of the Khasra and he will have only right of Pujari and will not claim any right, title and interest in the property."

Thus, it is claimed that the Pujaris are entitled for mutation of their names in column no. 12 to show their possession over the property belonging to the Public Temple.

(7) Challenging the order dated 21-1-2019 (Annexure P/12), it is submitted by the Counsel for the Petitioners, that neither the State Govt. has any right to interfere with the rights of the Pujaris to cultivate the property belonging to the Public Temple, nor has any right to delete the names of the Pujaris from the revenue records. It is submitted that the action of the respondents is contrary to the judgments passed by this Court in the above mentioned cases.

(8) *Per contra,* it is submitted by the Counsel for the respondents, that since, the Pujaris have no right or title in the property of the Public Temple, therefore, their names are not required to be recorded in the revenue records.

(9) Heard the learned Counsel for the Parties.

(10) This petition has been filed in the name of Temple through the Pujaris. Thus, the Pujaris have tried to file this petition as a *de facto* Shebait. The question is that where the Pujaris are claiming their possession over the

property which belong to deity, then whether they can claim themselves to be a *defacto* Shebait for the protection of the interest of the deity or not?

(11) The Supreme Court in the case of **M. Siddique (D) Thr. Lrs Vs. Mahant Suresh Das and others by judgment dated 9-11-2019 passed in C.A. No. 10866-10867 of 2010** has held as under :-

> "**338.** A suit by a shebait on behalf of an idol binds the idol. For this reason, the question of who can sue on behalf of an idol is a question of substantive law. Vesting any stranger with the right to institute proceedings on behalf of the idol and bind it would leave the idol and its properties at the mercy of numerous individuals claiming to be next friend'. Therefore, the interests of the idol are protected by restricting and scrutinizing actions brought on behalf of the idol. For this reason, ordinarily, only a lawful shebait can sue on behalf of the idol. When a lawful shebait sues on behalf of the deity, the question whether the deity is a party to the proceedings is merely a matter of procedure. As long as the suit is filed in the capacity of a shebait, it is implicit that such a suit is on behalf of and for the benefit of the idol.
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> **351.** In view of these observations, it is apparent that where the interests of the idol need to be protected, merely permitting interested worshipers to sue in their personal capacity does not afford the deity sufficient protections in law. In certain situations, a next friend must be permitted to sue on behalf of the idol – directly exercising the deity's right to sue. The question of relief is fundamentally contextual and must be framed by the court in light of the parties before it and the circumstances of each case.
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> **352.** This, however, brings us to the second question whether allowing a next friend to sue on behalf of the idol puts the idol at risk. The idol and its properties must be protected against the threat of a wayward _next friend'. Where the shebait acts in a mala fide manner, any person claiming to be a _next friend' may sue. Such a person may in truth have intentions hostile to the deity and sue under false provenance. Even a well-intentioned worshiper may sue as a next friend and purely due to financial constraints or negligence lose the suit and adversely bind the deity. A solution offered by Justice Pal

> in Tarit Bhushan Rai, and urged by Dr Dhavan in the present proceedings, is that only court appointed next friends may sue on behalf of the idol. No doubt this would satisfy the court that the next friend is bona fide and can satisfactorily represent the deity.
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> **353.** It is true that unless the fitness of the next friend is tested in some manner, an individual whose bona fides has not been determined may represent and bind the idol to its detriment. However, it would be unnecessarily burdensome to require every next friend to first be appointed by a court or for a court to find a disinterested person to represent the deity. The deity's interests would be sufficiently protected if, in cases where the bona fides of the next friend are contested by another party, the court substantively examines whether the next friend is fit to represent the idol. In an appropriate case, the court can do so of its own accord where it considers it necessary to protect the interest of the deity. In the absence of any objection, and where a court sees no deficiencies in the actions of the next friend, there is no reason why a worshiper should not have the right to sue on behalf of the deity where a shebait abandons his sacred and legal duties. Very often, worshipers are best placed to witness and take action against any maladministration by a shebait. Therefore, where a shebait acts adverse to the interests of the deity, a worshiper can, as next friend of the deity, sue on behalf of the deity itself, provided that if the next friend's bona fides are contested, the court must scrutinize the intentions and capabilities of the next friend to adequately represent the deity. The court may do so of its own accord, ex debito justitae.
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> **357.** Where the fitness of the next friend is in dispute the court should scrutinize the bona fides of the next friend....."

(12) In the present case, the Pujaris are seeking direction to the respondents to mutate their names in the revenue records in respect of the lands which are owned by the deity. Thus, the interest of the Pujaris is detrimental to the interest of the deity, therefore, they cannot be permitted to file this petition as a *de facto* Shebait or Next friend. However, in order to decide the *lis,* this Court

thinks it apposite to treat this petition as it has been filed by the Pujaris in their personal capacity.

(13) <u>Whether the property of Public Temple belongs to Pujaris or Deity.</u>

The Supreme Court in the case of **Bishwanath v. Shri Thakur Radha Ballabhji,** reported n **(1967) 2 SCR 618** has held as under :-

> **"9.** Three legal concepts are well settled: (*1*) An idol of a Hindu temple is a juridical person; (*2*) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshipers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have, according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage: see *Kalyana Venkataramana Ayyangar* v. *Kasturi Ranga Ayyangar*. In the present case, the plaintiff is not only a mere worshiper but is found to have been assisting the 2nd defendant in the management of the temple
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> **10.** The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshiper. An idol is in the position of a minor when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an *ad hoc* power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshiper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshiper in such circumstances to represent the idol and to recover the

property for the idol. It has been held in a number of decisions that worshipers may file a suit praying for possession of a property on behalf of an endowment; see *Radhabai Kom Chimnaji Sali* v. *Chimnaji Bin Ramji*, *Zafaryab Ali* v. *Bakhtawar Singh*, *Chidambaranatha Thambiran* Alias *Sivagnana Desika Gnanasambanda Pandara Sannadhi* v. *P.S. Nallasiva Mudaliar*, *Dasondhav* v. *Muhammad Abu Nasar*, *Kalayana Venkataramana Aiyangar* v. *Kasturi Ranga Aiyangar*, Shri *Radha Kirshnaji* v. *Rameshwar Prashad Singh*, *Manmohan Haldar* v. *Dibbenda Prosad Roy Choudhury*.

11. There are two decisions of the Privy Council, namely, *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick and Kanhaiya Lal* v. *Hamid Ali*, wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B.K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edn., summarizes the legal position by way of the following propositions, among others, at p. 249:

> "(*1*) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said to be merged in that of the Shebait.
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> (*2*) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol."

This view is justified by reason as well by decisions."

(14) Thus, it is clear that deity in a Hindu Temple is deemed to be a minor,

and it is the duty of the manager to act as a guardian of the Idol and is under an obligation to act solely for the idol's benefit. It is not the case of the Pujaris that they are the owners of the temples mentioned in the writ petition, but on the contrary, it is their own case, that the temples in question are Public Temples, and they were appointed as Pujaris by the S.D.O. An Idol is a juristic person, capable of holding property. Thus, the question that deity is the owner of the property has not been disputed by the Pujaris.

(15) Initially, the case of the Pujaris was that their names should be recorded in Column no.3 of the Khasra Panchsala being the "Bhumiswami" of the land belonging to the Public Temple, however, by filing rejoinder, the Pujaris have claimed that their names may be recorded in column no. 12 in which the name of the person, who is in possession of the land, is recorded.

(16) By referring to the order dated 6-12-2017, it is submitted by the Counsel for the Pujaris, that this Court had directed the respondent as under :

> " Shri Jain prays for and is granted two weeks' time to file additional return to highlight as to whether the names of Pujari are being deleted from the revenue record or not and if they are being deleted, under which provision of law."

(17) It is submitted that the respondents have filed their return and have claimed that the names of the Pujaris are being deleted in the light of the circular dated 21-3-1994 which has already been quashed by this Court in the case of **Pujari Utthan Avam Kalyan Samiti (Supra).** Therefore, it is prayed that the respondents have acted on the basis of a non-existing circular and thus, their entire action is bad in law.

(18) Considered the submission made by the Counsel for the petitioners.

(19) The Supreme Court in the case of **Shri Ram Mandir Indore Vs. State of Madhya Pradesh and others** by judgment **dated 27-2-2019** in **C.A. No. 5043 of 2009** has held as under :

> **"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.
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> (Underline supplied)

The Supreme Court in the case of **Sri Ganapathi Dev Temple Trust v. Balakrishna Bhat,** reported in **(2019) 9 SCC 495** has held as under :

> **12.** The suit property admittedly belongs to the appellant Temple. It is also not disputed that Respondent 1(*b*) and his predecessors were the archaks of the temple. Needless to say, it is the bounden duty of the archak to protect the temple property, and they cannot usurp such property for their own gains. It is relevant in this regard to refer to the judgment of this Court in *Bishwanath* v. *Radha Ballabhji*: (AIR p. 1047, paras 9-11)
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> > "*9.* Three legal concepts are well settled: (1) an idol of a Hindu temple is a juridical person; (2) when there is

a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense.

10. The question, is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshiper. *An idol is in the position of a minor*; when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest.

11. … B.K. Mukherjea in his book *The Hindu Law of Religious and Charitable Trust*, 2nd Edn., summaries the legal position by way of the following propositions, among others, at p. 249:

> '(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said, to be merged in that of the Shebait.
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> (2) *Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol*.'

This view is justified by reason as well as by decisions."

(emphasis supplied)

Therefore, it is well-settled that the deity in a Hindu temple is deemed to be a minor, and the Shebait, archaka, etc. or the person functioning as manager/trustee of such temple acts as the guardian of the idol and conducts all transactions on its behalf. However, the shebait or archaka is obligated to act solely for the idol's benefit. In *Radha Ballabhji*, this Court affirmed the lower courts' finding that a sale made by the manager of the deity to a third party, which was not for the necessity of the benefit of the idol, would not be binding on the deity, and worshipers or

other parties who had been assisting in the management of the temple could apply to have such a sale set aside.

13. In the present case, since Respondents 1(*a*) to 1(*e*) and his predecessors were holding the position of archaks and were involved in the management of the temple, it would have been easy for them to get their names entered in the revenue records, ignoring the interest of the temple. Even otherwise, their attempt to claim occupancy rights over the suit property have failed. As mentioned supra, according to their own admission before the Land Tribunal, they were not in possession of the suit property.

14. The principle laid down by the Court in *Radha Ballabhji* would be applicable to the present scenario as well. Hence the appellant Temple has the right, through its present managing trustee, to undertake proceedings for the benefit of the idol for having such wrongful entries set aside, and such wrongful entries would not be binding on the temple.

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23. Section 133 of the 1964 Act provides that an entry in the record-of-rights shall be presumed to be true until the contrary is proved, or a new entry is lawfully substituted therefor. An entry cannot be made in the record-of-rights without the valid mutation entry as provided for in Sections 128 and 129 of the 1964 Act. No pleading is forthcoming that a mutation entry was validly made at any point of time in favour of the respondents. In view of the above discussion, since it has been proved that there was no basis for making the revenue entry in respect of the suit property, and a new entry has lawfully been made in the appellant's name, we see no reason to give the respondents the benefit of Section 133 as was done by the Division Bench in the impugned judgment.

24. Admittedly, the appellant ought to have been more diligent in getting the revenue entry corrected. However, they had explained in their submissions before the learned Single Judge in *Balakrishna Baba Bhat* v. *Sri Ganapathi Dev Temple Trust* that they were under the genuine impression that since the Revenue Authorities had found that that the writ petitioners (the respondents herein) are not entitled to be registered as tenants of the land, the competent authorities would suo motu carry out the necessary corrections in the record-of-rights. However the authorities regretfully failed to do in spite of the direction to this effect given by the Assistant Commissioner in his order dated 15-3-2000, which was not challenged by the

> respondents herein. The Division Bench has overlooked this aspect of the matter while reaching its conclusions. Apart .from this, the Division Bench has made certain observations which are against the available facts borne out from the record. The Division Bench wrongly observed that there is no documentary evidence that the suit property is in possession of the temple, whereas, as mentioned supra, the records of proceedings show that the respondents themselves have admitted they have no right over the suit property and it belongs to the temple.
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> **25.** Hence on the basis of the materials on the record, we conclude that the entry in the respondents' predecessors' names in the record-of-rights was illegal and the revenue records in respect of the suit property were correctly modified in the appellant's name by the orders of the Revenue Authorities dated 21-5-2003, 30-7-2005 and 23-3-2006.

The Supreme Court in the case of **M. Siddique (D) Thr. Lrs (supra)** has held as under :-

> **"123.** 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 recognize 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 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.
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> **332**. 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 Dutt218, 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. Justice Ramaswami held:

> ―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 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…

333. 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.219 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 Justice JR Mudholkar held:

> ―…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."

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

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

377. 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.
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> **389...**.....As noted above, a pujari who conducts worship at a temple is not elevated to the status of a shebait. A pujari gains no independent right 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. The mere performance of the work of a pujari does not in and of itself render a person a shebait. The statement of DW 3/2 establishes at the highest that some priests of Nirmohi Akhara were acting as pujaris, but does not evidence the exercise of management rights for the recognition of their status as a shebait.

This Court in the case of **Maruti Shri Ganesh Ji Mandir and Ors vs. State of MP** passed on 08/01/2019 in Second Appeal No. 885 /2018 has held as under :

> "Thus, it is clear that the plaintiffs/Pujaries have filed the present suit in the name of the Deity because they are earning livelihood from the Temple.Thus, the suit was filed for the protection of personal interest by the Pujaris. Furthermore, specific objection was raised before the trial Court by the defendants that since the Collector is the Manager (Shebait) of the Deity, therefore, without permission and consent of the Collector, the suit is not maintainable. However, it appears that the trial Court without considering the law laid down by the Supreme Court in the case of **Vemareddi Ramaraghava Reddy** (supra), had rejected the said objection by order dated 19/12/2008. In the opinion of this Court, in absence of any

> adverse pleading against the Collector/Manager (Shebait) of the Deity, the Pujaris were not entitled to file the suit. Had it been the case of the Pujaris that the Collector is working to the detriment of the interest of Deity, therefore, they are liable to file the suit for the protection of the property belonging to the Deity, then the suit was maintainable. However, the case of the plaintiffs themselves are that when they approached the Collector, the Collector had restrained the respondents from encroaching upon the land belonging to the Temple. Thus, in absence of any pleading against the Collector/Manager (Shebait), this Court is of the considered opinion that the suit filed by the Pujaris on behalf of the Deity was not maintainable. Further, the appeal against the judgment and decree passed by the trial Court was filed by the Chief Medical & Health Officer as well as the Collector of District Ashok Nagar. The Collector being, Shebait of the Deity, is responsible for maintenance of the Temple and since the suit was filed by the Pujaris for protection of their personal and vested interest, this Court is of the considered opinion that the trial Court committed material illegality by rejecting the objections filed by the respondents with regard to maintainability of the suit in absence of consent of the Manager of the Deity. "

(20) The petitioners have not claimed that they are the owners of the temple or the temple is their private property, however, it is their case also, that the temple in question is a Public Temple. However, it is submitted that since, the Pujaris are looking after the lands belonging to the Deity, therefore, their name should be recorded in the revenue record as "Bhumiswami" in Column no. 3, or at least in column no.12 of the Khasra Panchsala, as a person in possession. As held by the Supreme Court in the case of **M Siddique (D) Thr Lrs (Supra), Shri Ram Janaki Temple (Supra)** and **Sri Ganapathi Dev Temple Trust (Supra),** the petitioners have no right or say in the management of the temple and they have a limited right of offering prayer/puja. They cannot claim themselves to be manager/Shebait of the Public Temple which is a

Maufi Auqaf Property. The Collector is the Manager of the Public, and only he can manage the property of the Public Temple. Thus, this Court is of the considered opinion, that the names of the Pujaris are not required to be mentioned either in column 3 or column 12 of the Khasra Panchsala.

(21) So far as the judgments passed by the Division Bench and Single Bench of this Court are concerned, they are no longer good law, in the light of the judgments passed by the Supreme Court in the case of **Shri Ram Janaki Temple (Supra), Sri Ganapathi Dev Temple Trust (Supra),** and **M Siddique (D) Thr Lrs (Supra).**

(22) It is next contended by the Counsel for the Petitioners, that this Court by order dated 6-12-2017 had directed the State to inform that under what provision of law, the names of the Pujaris have been deleted from the revenue record but the said query has remained unanswered.

(23) It is suffice to say that since, the petitioner(s)/Pujaris have no right or title or say in the property of the Public Temple, and they have a limited right to offer prayer only, therefore, as held by the Supreme Court in the case of **Sri Ganapathi Dev Temple Trust (Supra),** it is held that the petitioners in the capacity of a Pujari of the Public Temple, are not entitled to get their names mutated in the land record (Khasra Panchsala). **Thus, the respondents did not commit any mistake by deleting the names of Pujaris from the Khasra Panchsala.**

(24) Therefore, this petition is **Dismissed with** a direction to the Collector, Gwalior to ensure that the property of the respective temples is properly

managed and the Collector, Gwalior shall also ensure that the accounts of book regarding income and expenditure of the Temples are properly maintained and the income of the temple is utilized for the management of the Temples.

(25) Similarly, **WP 161/2017, WP 524/2017, WP 3353/2019, WP 18724/2019 & WP 17845/2019** are also **Dismissed** with aforesaid directions

(26) The interim orders granted on earlier occasion are hereby vacated.

(G.S.Ahluwalia)
Judge

MKB*