

**IN THE HIGH COUR OF MADHY PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**SECOND APPEAL No. 464 of 2001**

- 1A. RAGHUNANDAN (DECEASED) THROUGH  
LEGAL REPRESENTATIVE HEERAMANI  
JOSHI W/O RAGHUNANDAN, AGED : 50  
YEARS, OCCUPATION : TEACHER, R/O  
MATHUR COLONY, BADNAWAR, DISTRICT  
DHAR (MADHYA PRADESH)**
- 1B. RAGHUNANDAN (DECEASED) THROUGH  
LEGAL REPRESENTATIVE ADITYA JOSHI  
S/O RAGHUNANDAN, AGED : 21 YEARS,  
OCCUPATION : STUDENT, R/O MATHUR  
COLONY, BADNAWAR, DISTRICT DHAR  
(MADHYA PRADESH)**
- 1C. RAGHUNANDAN (DECEASED) THROUGH  
LEGAL REPRESENTATIVE ADITI JOSHI  
W/O SACHIN JOSHI AND D/O  
RAGHUNANDAN, AGED : 28 YEARS,  
OCCUPATION : HOSUEWIFE, R/O 120,  
AHINSA NAGAR, PRATAPGARH  
(RAJASTHAN)**
- 1D. RAGHUNANDAN (DECEASED) THROUGH  
LEGAL REPRESENTATIVE AWANI JOSHI  
D/O RAGHUNANDAN, AGED 25 YEARS,  
OCCUPATION : STUDENT, R/O MATHUR  
COLONY, BADNAWAR, DISTRICT DHAR  
(MADHYA PRADESH)**
- 2. NILESH KUMAR S/O KAILASHCHANDRA,  
AGED : 37 YEARS, OCCUPATION :  
AGRICULTURE AND PUJARI, R/O VILLAGE  
BHOPAWAR, TEHSIL SARDARPUR,  
DISTRICT DHAR (MADHYA PRADESH)**
- 3. NARENDRAKUMAR S/O  
RAMESHCHANDRA, AGED : 36 YEARS,  
OCCUPATION : AGRICULTURE AND**

**PUJARI, R/O VILLAGE BHOPAWAR, TEHSIL  
SARDARPUR, DISTRICT DHAR (MADHYA  
PRADESH)**

4. **MAHENDRAKUMAR S/O  
RAMESHCHANDRA, AGED : 34 YEARS,  
OCCUPATION : AGRICULTURE AND  
PUJARI, R/O VILLAGE BHOPAWAR, TEHSIL  
SARDARPUR, DISTRICT DHAR (MADHYA  
PRADESH)**
5. **VIRENDRAKUMAR S/O RAMESHCHANDRA,  
AGED : 30 YEARS, OCCUPATION :  
AGRICULTURE AND PUJARI, R/O VILLAGE  
BHOPAWAR, TEHSIL SARDARPUR,  
DISTRICT DHAR (MADHYA PRADESH)**

**.....APPELLANTS**

***(SHRI A.S. GARG – SENIOR ADVOCATE WITH  
SHRI JITENDRA SHUKLA - ADVOCATE)***

**AND**

1. **STATE OF MADHYA PRADESH THROUGH  
COLLECTOR, DHAR (MADHYA PRADESH)**
2. **MADHULIKA D/O KAILASHCHANDRA, W/O  
ASHWINKUMAR, AGED ADULT,  
OCCUPATION : HOUSEHOLD WORK, R/O :  
TIRALA, TEH. AND DISTRICT DHAR  
(MADHYA PRADESH)**
3. **DEEPIKA D/O KAILASHCHANDRA, W/O  
DILIPKUMAR, AGED : 24 YEARS,  
OCCUPATION : HOUSEHOLD WORK, R/O  
RALA MANDSAL, TEH: SARDARPUR,  
DISTRICT DHAR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(R.NO.1 BY SHRI SHALABH SHARMA - GOVERNMENT ADVOCATE)***

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**Reserved on : 12/04/2024**

**Pronounced on : 19/04/2024**

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*This appeal having been heard and reserved for orders, coming on  
for pronouncement this day, the Justice Anil Verma pronounced the*

*following:*

### **JUDGMENT**

Appellants / plaintiffs have preferred this second appeal under Section 100 of Code of Civil Procedure, 1908 (hereinafter referred as 'C.P.C.') being aggrieved by the impugned judgment and decree dated 13.07.2001 passed by the Additional District Judge, Sardarpur, District Dhar (M.P.) in Civil Appeal No.67-A/1998, thereby reversing the judgment and decree dated 25.04.1998 passed by the Civil Judge, Class I, Sardarpur, District Dhar (M.P.) in Civil Suit No.72-A/97, whereby suit for declaration of title and permanent injunction filed by the appellants has been partly decreed.

2. The facts of the case in brief are that Shri Ram temple (hereinafter referred as the 'disputed temple') was the personal temple owned by Jagirdar Bhopawar and the appellants / plaintiffs' ancestors received the disputed land / Muafi land (land exempted from payment of revenue) through the Jagirdar and the appellants' ancestors are the Muafidar. After abolition of Jagirdari of appellants' ancestors, they became the *Pakka* tenant and Bhumiswami of the disputed land and temple and also confers Bhumiswami rights. Respondents and their employees without providing any opportunity of hearing illegally mutated the disputed Muafi land in the name of Collector and plaintiffs' name as a Pujari were illegally removed from the Khasra and revenue records. They had continuously threatened the plaintiffs for dispossessing them from the disputed land and temple. Hence, he prays that plaintiffs be declared Bhumiswami or *Sabayatdar* and permanent injunction be issued against the defendants to restrain them for committing any interference in the possession of the plaintiffs in respect of the suit land and the temple.

3. Respondent No.1 filed written statements and denied the plaint allegation with the contention that appellants / plaintiffs have no title over the suit land or temple. The suit land was not the Muafi land and after abolition of Jagirdari, plaintiffs did not obtain any title over the suit land. The suit was neither properly valued nor requisite court fees was paid, therefore, the suit deserves to be dismissed.

4. On the aforesaid pleadings, the trial Court has framed issues and after recording the evidence and hearing both the parties, partly allowed the suit filed by the plaintiffs *vide* judgment and decree dated 25.04.1998. Being aggrieved by the said judgment and decree, respondents/defendants have preferred an appeal before the first appellate Court and *vide* impugned judgment and decree dated 13.07.2001, the first appellate Court has reversed the judgment and decree passed by the trial Court. Being aggrieved by the same, appellants/plaintiffs have preferred this second appeal.

5. Learned counsel for the appellants contended that the judgment and decree passed by the first appellate Court is contrary to law and facts, the appellate Court has erred in dismissing the suit of appellants / plaintiffs. The first Appellate Court has not considered that the temple was situated in Village Bhopawar, which belongs to the erstwhile Gwalior State and according to the list of the Government Temples maintained by the Aukaf Department, did not reveal the name of temple as a Government Temple. It was a private temple and the same was neither constructed by the State nor maintained by the State, therefore, respondent No.1 had no authority to auction the land of the said temple. Learned appellate Court has erred in not considering the provision of Section 57(2) of M.P. Land Revenue Code (hereinafter referred as 'MPLRC'). Thus, in view of the

aforesaid, learned counsel for the appellants submits that appeal deserves to be admitted on the substantial questions of law so proposed by the appellants.

6. Per contra, counsel for respondent No.1 / State submits that impugned judgment passed by first appellate Court is duly based upon the cogent evidence available on record, therefore, it does not require for any interference.

7. Despite service of notice, nobody appeared on behalf of respondent Nos.2 and 3.

8. This appeal was admitted on the following substantial questions of law:

*“(i) Whether, lower appellate court was justified in holding in para 18 of the impugned judgment that suit filed by the plaintiff is not maintainable and hit by provisions of Section 57(1)(2) of M.P.L.R. Code?”*

*“(ii) Whether, the lower appellate Court was justified in observing in para 11 of the impugned judgment that plaintiff (appellant herein) did not file any appeal, whereas the order-sheet recorded by the lower appellate Court on 05.07.1999 clearly records that instead of filing an appeal by the plaintiff, they have filed cross objection under Order 41 Rule 22 of CPC challenging certain findings recorded against them by the learned trial Judge?”*

9. I have gone through the judgments and decrees passed by both the Courts below and also perused the entire record with due care.

10. The provisions of MPLRC, which are relevant for the instant case are reproduced as under:

*“ 2. Definitions--*

*(1) In this Code, unless there is anything repugnant to the subject or context,*

*xxx*

*xxx*

*xxx*

*(z-3) "unoccupied land" means the land in a village other than the abadi or service land, or the land held by a Bhumiswami, a tenant or a government lessee.*

#### *57. State ownership in all land-*

*(1) All lands belong to the State Government and it is hereby declared that all such lands, including Standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any are the property of the State Government:*

*Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.*

*Bhumiswami – [(1)] Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code namely-*

*(a) every person in respect of land held by him in the Mahakoshal region in Bhumiswami or Bhumidhari rights in accordance with the provisions of the Madhya Pradesh Land Revenue Code, 1954 (II of 1955);*

*(b) every person in respect of land held by him in the Madhya Bharat region as a Pakka tenant or as a Muafidar, Inamdar or Concessional holder, as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samwat 2007 (66 of 1950);*

*(c) every person in respect of land held by him in the Bhopal region as an occupant defined in the Bhopal State Land Revenue Act, 1932 (Iv of 1932);*

*160. Revocation of exemption from liability for land*

*revenue (1) Every Muafi or Inam land, wherever situate, which was heretofore exempted from payment of the whole or part of the land revenue by a special grant from the Government or under the provisions of any law for the time being in force or in pursuance of any other instrument shall, notwithstanding anything contained in any such grant, law or instrument be liable from the commencement of the revenue year next following the coming into force of this Code, to the payment of full land revenue assessable thereon.*

*(2) Where any such Muafi or Inam land is held for the maintenance or upkeep of any public religious or charitable institution, the State Government may, on the application of such institution, in the prescribed form [and made within such time as may be prescribed] grant to it such annuity not exceeding the amount of the exemption from land revenue enjoyed by it, as may be considered reasonable for the proper maintenance or upkeep of such institution or for the continuance of service rendered by it.”*

11. The Madhya Pradesh Land Revenue Code, 1959 was brought into force with effect from 21.09.1959 and thereafter, the Act was brought into effect to consolidate and amend the law relating to the land revenue, the powers and jurisdiction of Revenue Officers, right and liabilities of holders of land from the State Government, agricultural tenures and any other matters relating to the land and liabilities regarding agriculture land situated in the boundaries of Madhya Pradesh.

12. State of Madhya Pradesh has been constituted with various parts of the State of Madhya Bharat, Gwalior, Indore, Malwa, Bhopal and so many other territories and the law relating to the land revenue, powers of the Revenue Officers, rights and liabilities of holders of the land from the erstwhile States, State Government, agricultural tenures and other matters

relating to lands and incidental thereto were regulated by various State laws, such as Qanoon Mal in the State of Gwalior and so many other State laws, but after enactment of the M.P. Land Revenue Code, 1959 all these matters have been recovered in the Act.

13. The materials relating to the question, whether the temple is a public temple or a private one may be considered under four heads:

- (i) the will, lease or licence issued by the actual owner in favour of any priest;
- (ii) use of temple by the public;
- (iii) ceremonies relating to the dedication of temple in question and installation of idol with special reference.
- (iv) other facts relating to the character of the temple.

14. Learned counsel for the appellant firstly contended that Pujaris have been conferred Bhumiswami rights, a right which cannot be taken away by executive instructions. It was argued that in terms of proviso of Section 57 of MPLRC, the rights granted to the Pujaris have been protected and would remain unaffected by the MPLRC. In terms of Section 158, every person, in respect of land held in Madhya Bharat region as a Pakka tenant or as Muafidar, Inamdar or concessional holder, confers Bhumiswami rights. It is also argued that the temple in question is a private temple and therefore, Collector has no jurisdiction in any matter related to the private temple.

15. Before the trial Court, appellant Raghunandan (PW-4) deposed that Shri Ram Temple situated at Bhopawar belongs to his ancestors and his ancestors were doing worship for long period and disputed land was also registered in the name of his forefathers. Plaintiffs exhibited document Ex.-P/1 to P/27 in his evidence and categorically stated that M.P. State

Government has no relation with the disputed temple as well as the disputed land. Kishore (PW-1), who is the Anulekhak posted in PWD, Sardarpur, Veernarayan (PW-2), who is the Office Kanungo in Sardarpur categorically stated that the temple in question is not found register in the list of Government Temple situated at village Bhopawar. Plaintiff Raghunandan in Para 13 of his cross-examination categorically admits that the Mandir is their personal property and deity of God Ramji is the owner of suit land.

16. Patwari Sohanlal (DW-1) deposed that the owner of temple is deity and Collector, Dhar is the Manager of the temple. The evidence adduced by the plaintiff Raghunandan is contrary to the plaintiff's pleading. As per the plaint averments, the temple in question was the property of the Jagirdar, but in the evidence the stand of plaintiff is he / his ancestors are owner of the temple. In the present case, the main question which is required to be decided is whether a priest can be treated as Bhumiswami under the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 and as a consequence under the MPLRC. The reliance of the respondent is on Gwalior Act. The law is clear on the distinction that the Pujari is not a Kashtkar Morushi, or a Government lessee or an ordinary tenant of the Muafi lands. The Pujari is the only a person, who has appointed to manage property of deity, therefore, he cannot be treated as deity. In a Judgment reported as **Ramchand (Dead) by Legal Representatives V. Thakur Janki Ballabhji Maharaj and Another [AIR 1970 SC 532]**, 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.

17. Hon'ble the Apex Court in the case of **M.P. State V. Pujari**

**Utthan Avam Kalyan Samiti 2021 (2) RN 193** it has been held that “*the priest cannot be treated to be either a maufidar or inamdar and he cannot treated to be bhumiswami, status of pujari is only that of manager. The citation is applicable in the instant case and on the basis of aforesaid, it is clear that since the priest cannot be treated a bhumiswami, he has no right which could be protected under any of the provisions of MPLRC.*”

18. After abolition of Zamindari, the proprietorship of the land vests in the State to whom the rent is payable. It is not uncommon that a person in possession of an agricultural land holding even as an owner cannot put his land to any use as he desires. The plaintiff cannot further be equated with a proprietor or zamindar or an intermediary or jagirdar or malguzar whose proprietary rights were extinguished and vested by operation of law in the State.

19. Hon'ble the apex Court in the case of **Mst. Kanchaniya and Others Vs. Shiv Ram and Others** reported in **1992 Supp.(2) SCC 250** held that Pujari had no other status than that of the manager functioning under the control of the Aukaf Department. The Patta having been granted for the limited period of lifetime of ‘M’ and therefore rejected the contention of the appellants that they acquired the ‘Bhumiswami’ right over the land in dispute. Para 17 is reproduced below:

*“17. Under s.185(1), every person, belonging to any of the categories specified thereunder, shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred or imposed upon an occupancy tenant by or under the Code. Under s.190, Bhumiswami rights are conferred on an occupancy tenant in cases where the Bhumiswami, whose land is held by an occupancy tenant, fails to make an application under s.189(1) within the period laid down therein.*

*The submission of Shri Shiv Dayal is that Malkhan, being in occupation of the land in dispute as a sub-tenant, became an occupancy tenant under s.185(1), and since the Bhumiswami of the land in dispute did not make an application under s.189(1), Malkhan acquired Bhumiswami rights over the same under s.190 of the Code. This contention proceeds on the assumption that Malkhan was a sub-tenant of the land in dispute on the date of coming into force of the code. But since we have found that no rights were created in favour of Malkhan under the patta granted by Vasudev Rao. Malkhan cannot claim to be a sub-tenant of the land in dispute on the date of the commencement of the Code and, therefore, the submission of Shri Shiv Dayal that Malkhan had acquired Bhumiswami rights over the land in dispute cannot be accepted.”*

20. The another question which arise for consideration is whether the State Government by way of executive instruction can pass an order for deletion of name of Pujari from the revenue records and insert the name of Collector as Manager. Learned counsel for the respondent has placed reliance upon the judgment of **Pujari Utthan Avam Kalyan Samiti (supra)** in which it has been held that “*name of Collector as a Manager cannot be recorded in respect of the property vested to the deity as the Collector cannot be a Manager of all the temples unless the temple vested with the State.*” But in the instant case, appellants did not implicate the deity or concerned Jagirdar as a party, who is the actual owner of the said temple, therefore, non-joinder of necessary and proper party, suit does not appear to be maintainable.

21. It is also to be seen that nothing is mentioned in the revenue record and all other documents exhibited by the plaintiffs that the temple in question is the personal property of the plaintiffs. Appellants / plaintiffs

have completely failed to prove their ownership or title over the suit property. After abolition of Jagirdari if any property or land was remained unclaimed, then its title goes with the State Government on the basis of aforesaid.

22. From the evidence of plaintiff Raghunandan (PW-4) and Mohan (PW-3), it is clear that the temple has been used by all the villagers and also been maintained by the villagers, therefore, the temple in question cannot be treated as a personal property of the appellants / plaintiffs. The name of Collector is mentioned as a Manager of the suit land and temple in question. A specific order has been issued for appointment of Collector as a Manager of temple in question, which was never challenged by the appellants before the competent revenue authorities having jurisdiction, therefore, appellants have failed to prove their case. Under these circumstance, this Court is in agreement with the findings of facts recorded by the first appellate Court and uphold the judgment and decree passed by it.

23. Accordingly, the substantial questions of law which are framed are answered in negative and are found in favour of the respondents. The second appeal is, therefore, without force and is dismissed while affirming the judgment and decree passed by the First Appellate Court.

No order as to costs.

Certified copy as per rules.

**(ANIL VERMA)**  
**JUDGE**

*Anushree / Tej*