

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: HON'BLE MR. S. C. SHARMA AND  
HON'BLE MR. VIRENDER SINGH, JJ

WRIT APPEAL No. 1795 / 2018

SURENDRA SINGH S/O KHUMAN SINGH  
Vs.  
SAGARBAI W/O RAMLAL AND OTHERS

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Counsel for the petitioner : Mr. Rohit Mangal, learned counsel for the appellant.  
Counsel for the respondent : Mr. Mangesh Bhachawat, learned counsel for the respondents.  
Whether approved for reporting : YES  
Law laid down : Deity is a perpetual minor and in case the property which is dedicated to the deity is sold by the Manager, such a sale is void.  
Significant paragraph numbers : 10 to 17.

J U D G M E N T  
(03/07/2019)

PER : S. C. SHARMA, J :-

The appellant before this Court has filed this Writ Appeal being aggrieved by the judgment dated 31/10/2018 passed in W.P.No. 3428/2017 (Sagar Bai and others Vs. State of Madhya Pradesh and another).

**02.** Facts of the case reveal that the respondents before this Court were claiming themselves to be the owners of Temples and the land appurtenant thereto. The agricultural

land situated at Gram Bawal Nai, Tehsil Javad, District Neemuch was recorded in the revenue record in the name of Lord Shri Girdharnath Ji. The details of the land attached to the temples and recorded in the name of deity are as under :

Survey No.	Area in Hectares
423/1	0.575
115	0.177
116	0.355
117	0.329
118/1	0.052
118/2	0.052
120	0.533
121	1.859

**03.** The respondent in the present appeal, (respondent No.4) who was the petitioner before the learned Single Judge, has filed a Civil Suit seeking declaration of title and permanent injunction with regard to the disputed temples / land attached to it. The necessity arose to file a Civil Suit only because the name of the petitioner / respondent No.4 / was deleted from the revenue record as a Manager and the name of the Collector was mutated in place of respondent No.4. The Collector was going to auction the land attached to the temple and in those circumstances a necessity arose to

file a Civil Suit. The relevant paragraphs in the plaint preferred by the respondent No.4 against the State Government, are as under :

यह कि, ग्राम नई बाबल में वादी के पैतृक वंश परम्परागत गृह देवता के निम्नांकित व्यक्तिगत मंदिर है -

01. मंदिर भगवान श्री गिरधारीनाथजी
02. मंदिर भगवान श्री पिताम्बराजी
03. मंदिर भगवान श्री अम्बेश्वर महादेवजी

यह मंदिर सदैव से वंश परम्परा अनुसार कूलदेवता के नाते व्यक्तिगत जागीरदार सा. के जमाने से वादी के वंश द्वारा पूजित होते हैं इन मंदिरों की पूजा की व्यवस्था पुजारी की नियुक्ति पुजारी की निरस्ती का स्वत्व हमेशा से आज दिन तक वादी के परिवार द्वारा होता चला आ रहा है। जागीरदार सा. श्री हिरेन्द्रसिंहजी के स्वर्गवासी होने के बाद वादिया ही अपने पारिवारिक देव मंदिर की समस्त व्यवस्था पुजारी की नियुक्ति निरस्तगी करती है। इन मंदिरों पर वादिया ही करती है व पुजारी को उसका पारिश्रमिक देती है। यह मंदिर प्रायवेट है पब्लिक नहीं है। इन मंदिरों से जन साधारण का पब्लिक का कोई स्वत्व सूखाधिकार व्यवस्था आज तक नहीं रही है। आज भी वादिया की समस्त व्यवस्था कर रही है। इन मंदिरों को वादपत्र में आगे की चरणों में सुविधा हेतु वादग्रस्त मंदिर के नाम से संबोधित किये गये हैं।

अतः प्रार्थना है कि वादी के हित में प्रतिवादी के विरुद्ध निम्नानुसार जयपत्र प्रदान किया जावे :-

अ. यह स्वत्व घोषित किया जावे कि वादग्रस्त मंदिर प्रायवेट व्यक्तिगत वादिया के वंश के हैं और पब्लिक नहीं है व इनकी व्यवस्था वादिया की है प्रतिवादी जिलाध्यक्ष मंदसौर इसके व्यवस्थापक नहीं है।

ब. यह घोषित किया जावे कि शासकीय रेवेन्यु रिकार्ड में वादग्रस्त मंदिर के पुजारी के स्थान पर जो सितारामदास व गब्बू ब्राह्मण का इन्द्राज है वह गलत है और व्यवस्थापक देवस्थान पर जो जिलाध्यक्ष मंदसौर का नाम दर्ज है वह अवैध है गलत है व इनकी रेवेन्यु रिकार्ड खाता व खसरो से कम कराने की व व्यवस्थापक के स्थान पर वादिया का नाम लिखाने की वादिया पात्र है।

स. जयें सीई निषेधाज्ञा प्रतिवादी को सदैव के लिये रोका जावे कि वह स्वयं व अपने अधीनस्थ जिलाध्यक्षक तहसीलदार सा. जावद व पटवारी हल्का नं. 36 व 47 द्वारा या अन्य द्वारा वादग्रस्त आराजी की कृषि हेतु निलाम नहीं करे।

द. इस वाद का समस्त व्यय वादी को प्रतिवादी से दिलाया हो।

इ. अन्य न्यायोचित सहायता पात्रतानुसार वादिया को प्रदान हो।

**04.** By a judgment dated 3/4/1991, the trial Court has

granted a decree for declaration and permanent injunction and paragraph 28 of the judgment dated 3/4/1991 reads as under :

फलस्वरूप वादिया का वाद प्रतिवादी के विरुद्ध डिक्री किया जाता है तथा घोषित किया जाता है कि ग्राम नई बावल स्थित मंदिर भगवान श्री गोरधननाथजी, मंदिर भगवान श्री पीताम्बरजी, मंदिर भगवान श्री अमरेश्वर महादेवजी, वादिया के व्यक्तिगत है, जिनकी व्यवस्था वादिया की है जिलाधीश मंदसौर उनके व्यवस्थापक नहीं है। रेवेन्यु रिकार्ड में उपरोक्त मंदिर के पुजारी के स्थान पर सीतारामदास व गब्बू के इन्द्राज तथा व्यवस्थापक के स्थान पर जिलाधीश मंदसौर का इन्द्राज गलत है, जिन्हें कमकराकर वादिया अपना नाम लिखाने की पात्र है। प्रतिवादी के विरुद्ध सीई निषेधाज्ञा जारी की जाती है कि वह स्वयं अथवा अन्य द्वारा उपरोक्त मंदिरों की भूमि की कृषि हेतु निलाम नहीं करे। प्रतिवादी अपना तथा वादी का वाद व्य वहन करेगा। अभिभाषक शुल्क तदनुसार जयपत्र बनाया जावे।

**05.** Thereafter a First Appeal was preferred against the judgment dated 3/4/1991 by the respondent Collector / State and the First Appeal was also dismissed on 23/12/1997, meaning thereby, in place of Collector, Mandsaur, the name of plaintiff / respondent No.4 / petitioner was to be mutated. The revenue record, in the present case, categorically reveals that the land in question is in the name of deity and Column No.2 of the Revenue Record, which was annexed as Annexure P/1 with the Writ Petition, categorically mentions the owner of the land / title holder of the land as Mandir Shri Girdharnath Ji, through Manager Mohini Kunwar. Thus,

undisputedly, the property was in the name of deity.

**06.** In spite of the fact that the property was in the name of deity, the respondent No.4 before this Court – Mohini Kunwar has executed a sale deed of agricultural land exclusively belonging to the temple to respondent Nos. 1, 2 and 3 on 31/3/2004, 5/5/2004 and 10/11/2003.

**07.** The Gram Panchayat passed a resolution on 7/6/2004 for mutating the name of respondent No.1, 2 and 3 in the revenue records. Mutation of name in the revenue record is always done by the Tehsildar and there is a prescribed procedure provided under the M. P. Land Revenue Code, 1959 and in those circumstances a complaint was made before the Sub Divisional Officer and the Sub Divisional Officer by order dated 23/2/2011 has cancelled the resolution passed by the Gram Panchayat and liberty was also granted to the present appellant to take appropriate action in accordance with law for challenging the sale deed.

**08.** An appeal was preferred against the order passed by the Sub Divisional Officer and the appellate authority by order dated 3/8/2011 has dismissed the appeal for want of

maintainability.

**09.** Thereafter a Second Appeal was preferred against the order dated 3/8/2011 and the same was also dismissed by the Addl. Commissioner, Ujjain Division, Ujjain by order dated 23/4/2011. The respondent No.1 to 4 thereafter preferred a revision before the Board of Revenue and the Board of Revenue has also dismissed by revision by order dated 8/2/2017. The respondent No.1 to 4 thereafter filed a Writ Petition under Article 226 / 227 of the Constitution of India and the learned Single Judge has allowed the Writ Petition. The learned Single Judge has arrived at a conclusion that the temples in question were the private property of respondent No.4 and there is a difference between private temples and the temples open for public. It has also been observed that the authorities have wrongly concluded that the suit property is deity's property and, therefore, the mutation done on the basis of sale deed executed by respondent No.4 was in order. The learned Single Judge has arrived at a conclusion that respondent No.4 was competent to execute sale deed in favour of

respondent Nos. 1, 2 and 3 and respondent No. 1, 2 and 3 are entitled to get their name mutated in the revenue records, pursuant to the resolution passed by the Gram Panchayat dated 7/6/2004.

**10.** In the present case, the undisputed facts as established from the record makes it very clear that the temples in question and the lands attached to the temple were recorded in the revenue records in the name of Mandir Shri Girdharnath Ji and respondent No.4 is the Manager. It is not a case where the land is recorded in the name of respondent No.4 or her ancestors showing existence of a temple. The property in question was dedicated to the deity and the deity is perpetual minor and by no stretch of imagination, the property could have been sold by sale deed as the deity is the title holder of the property.

**11.** A similar view has been taken by the Division Bench of the Calcutta High Court in the case of Bijoy Krishna Mishra Vs. Chittaranjan Das Bera reported in **2016 SCC OnLine Cal 4476**. The Hon'ble Supreme Court in the case of A. A. Gopalkrishnan Vs. Cochin Devaswom Board and

others reported in (2007) 7 SCC 482 in paragraph 10 has held as under:

10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/ Sebaitis/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

12. In the light of the aforesaid judgment, as the deity is a perpetual minor and rights of the deity are to be protected by the Courts, no sale of land could have taken place in the manner and method it has been done and, therefore, the subsequent resolution passed by the Gram Panchayat for mutation of name is bad in law.

13. The Division Bench of Rajasthan High Court in the case of Kailash Chand and others Vs. Board of Revenue for Rajasthan Ajmer and others reported in **2008 SCC OnLine Raj. 839** has taken a similar view.

14. The Division Bench of this Court in the case of State



of Madhya Pradesh Vs. Pujari Utthan Avam Kalyan Samit reported in **2017 (3) MPLJ 377** has taken a similar view. It has been held in the aforesaid that the name of the Pujari mutated in the revenue record, cannot be replaced by the Collector, however, the fact remains that the Pujari will continue to be a Manager, he does not become the title holder and it is the deity who is the title holder of the property.

**15.** In another case decided by this Court ie., Gayaprasad and another Vs. State of MP reported in **2009 RN 347**, this Court after taking into account Sec. 158, 185 and 57 of the MP Trusts Act, 1951 has held that the Pujari cannot claim right of Bhumiswami or even right of a tenant and the deity being a juristic person can hold the same. It has been further stated that in respect of the property owned by the deity, it being a religious property, no right can be claimed by the Trustee or the Manager. Thus, in short, once it is an established fact that the title holder of the property is a deity, as in the present case, which is established from the revenue record (Annexure P/1) filed with the Writ Petition. The

respondent No.4 is simply a Manager and not the title holder. The title holder is Mandir Shri Girdharnath Ji (the deity) and, therefore, this Court is of the considered opinion that the order passed by the revenue authorities does not warrant any interference and the order passed by the learned Single Judge deserves to be set aside.

**16.** It is a well settled proposition of law that dedicated property vests in the idol as a juristic person. When a property is given absolutely by a pious Hindu for worship of an idol, the property vests in the idol itself as a juristic person. There are various judgments delivered from time to time on this issue. The Hindu idol is a juridical subject and the pious idea that it embodies is given the status of a legal person and is deemed capable in law for holding property in the same way as a natural person. It has a juridical status, with the power of suing and being sued. Its interest are attended to by the person who has the deity in his charge and who is in law its Manager, with all the powers which would, in such circumstances, on analogy, be given to the Manager of the estate of an infant heir and, therefore, once

the property has been given to a temple, which is known as debutter or endowment in favour of the established idol, the question of its disposal by the Manager is illegal. Once the property is dedicated to the deity which is a juristic person holding the title, cannot be sold by the Manager, as has been done in the present case and, therefore, the order of the Board of Revenue by which the resolution of the Gram Panchayat has been set aside in respect of the mutation, are certainly valid orders and, therefore, the order passed by the learned Single Judge which affirms the sale and mutation of the property belonging to the deity, deserves to be set aside and is accordingly hereby set aside.

17. The Writ Appeal stands allowed and disposed of.

(S. C. SHARMA)  
J U D G E

(VIRENDER SINGH)  
J U D G E

**KR**