IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 5th OF FEBRUARY, 2026

SECOND APPEAL No. 194 of 2006

STATE OF M.P. THROUGH COLLECTOR

Versus

MANDIR SHRI GANESHJI SITUATED AND OTHERS

Appearance:

Shri Rajendra Jain - Advocate for appellant.

Shri Prashant Sharma - Advocate for respondents.

JUDGMENT

Heard on I.A. No. 5512/2025, an application for condonation of delay in filing an application for setting aside abatement of appeal *qua* respondent No. 1(i) Sudhakar Rao Dixit, as well as on I.A No. 5505/2025, an application under Order 22 Rule 4, 9, 11 of CPC for setting aside abatement as well as for taking legal representatives of respondent No. 1(i) Sudhakar Rao Dixit, who expired on 11.5.2002, on record.

2. For the reasons mentioned in the application, **I.A. No. 5512/2025 is allowed** and delay in filing an application for setting aside abatement of appeal *qua* respondent No. 1(i) is hereby condoned.

3. As a consequence thereof, **I.A. No. 5505/2025 is also allowed** and abatement of appeal *qua* respondent No. 1(i) Sudhakar Rao Dixit is hereby set aside and his legal representatives are taken on record.

4. Heard on I.A. No. 5508/2025, an application for condonation of delay in filing an application for setting aside abatement of appeal *qua*

respondent No. 1(c) Narain Das Dixit, as well as on I.A No. 5506/2025, an application under Order 22 Rule 4, 9, 11 of CPC for setting aside abatement as well as for taking legal representatives of respondent No. 1(c) Narain Das Dixit, who expired on 12.3.2010, on record.

5. For the reasons mentioned in the application, **I.A. No. 5508/2025 is allowed** and delay in filing an application for setting aside abatement of appeal *qua* respondent No. 1(c) is hereby condoned.

6. As a consequence thereof, **I.A. No. 5506/2025 is also allowed** and abatement of appeal *qua* respondent No. 1(c) Narain Das Dixit is hereby set aside and his legal representatives are taken on record.

7. Heard on I.A. No. 5510/2025, an application for condonation of delay in filing an application for setting aside abatement of appeal *qua* respondent No. 1(d) Suresh Rao, as well as on I.A No. 5507/2025, an application under Order 22 Rule 4, 9, 11 of CPC for setting aside abatement as well as for taking legal representatives of respondent No. 1(d) Suresh Rao, who expired on 8.5.2023, on record.

8. For the reasons mentioned in the application, **I.A. No. 5510/2025 is allowed** and delay in filing an application for setting aside abatement of appeal *qua* respondent No. 1(d) is hereby condoned.

9. As a consequence thereof, **I.A. No. 5507/2025 is also allowed** and abatement of appeal *qua* respondent No. 1(d) Suresh Rao is hereby set aside and his legal representatives are taken on record.

10. Heard on I.A. No. 5509/2025, an application for condonation of delay in filing an application for setting aside abatement of appeal *qua*

respondent No. 1(a) B.B. Dixit, as well as on I.A No. 5511/2025, an application under Order 22 Rule 4, 9, 11 of CPC for setting aside abatement as well as for taking legal representatives of respondent No. 1(a) B.B. Dixit, who expired on 29.12.2010, on record.

11. For the reasons mentioned in the application, **I.A. No. 5509/2025 is allowed** and delay in filing an application for setting aside abatement of appeal *qua* respondent No. 1(a) is hereby condoned.

12. As a consequence thereof, **I.A. No. 5511/2025 is also allowed** and abatement of appeal *qua* respondent No. 1(a) Sudhakar Rao Dixit is hereby set aside and his legal representatives are taken on record.

13. Necessary amendments were carried out by counsel for appellant in the Court itself after taking due permission.

14. This Second Appeal under Section 100 of CPC has been filed against judgment and decree dated 31/03/2005 passed by First Additional District Judge, Ashoknagar, District Guna in Civil Appeal No. 46-A/2001, as well as judgment and decree dated 31/03/2000 passed by First Civil Judge, Class-II, Ashoknagar, District Guna in Civil Suit No. 130-A/1986.

15. Appellant–State is the defendant who has lost its case from both the Courts below.

16. The appeal, being arguable, is admitted on the following substantial questions of law:

> (i) Whether the Courts below failed to see that property belongs to the Deity and *Pujari*/Manager is merely a servant of the Deity and not the owner of the property belonging to Deity?
> (ii) Whether the Court below failed to see that plaintiff was never granted any license on succession basis to work as a Manager/*Pujari*?

17. Since all the respondents, including newly added legal representatives, have been served, therefore, with the consent of parties, appeal is heard finally.

18. The facts necessary for disposal of present appeal, in short, are that respondent Temple Shri Ganeshji filed a suit through Bhalchandra Rao who claimed himself to be the Manager and *Pujari* of Mandir Shri Ganeshji for declaration of title and permanent injunction in respect of the agricultural land situated in Village Shadora, Village Pipraul and Village Nagaukhedi, details of which have been given by the plaintiff in Schedule-I to the plaint, according to which 35.003 hectares of land is situated in Shadora, 4.922 hectares of land situated in Nagaukhedi and 2.790 hectares situated in Pipraul. Details of *Khasra* numbers have also been given in Schedule-A to the plaint. It is the case of plaintiff that Bhalchandra Rao is the *Pujari* and Manager of Temple Shri Ganeshji and it is his duty and right to manage and look after the affairs of temple. It was further claimed that Bhalchandra Rao has authority to file a suit on behalf of Temple Shri Ganeshji. In paragraph 1, it was pleaded that Bhalchandra Rao has no personal interest in the property belonging to the temple. It was the case of plaintiff that Temple Shri Ganeshji, which is a two-storey temple, was constructed about 200 years back. It was got constructed by Peshji Naro Chimnaji Subedar about 200 years back and idol of Siddha Vinayak Shri Ganeshji was consecrated. Predecessor of Bhalchandra Rao, namely Koner Bhatt Brahman Telang, was given the ownership right as well as possession in gift. It was claimed that the license given to the predecessor of Bhalchandra Rao is available with

Bhalchandra Rao. It was further claimed that the fact that temple was gifted to the predecessor of Bhalchandra Rao came to the knowledge of Bhalchandra Rao from the licenses which were given to his predecessor as well as from information received from the villagers and father of Bhalchandra Rao. It was claimed that after the Temple Shri Ganeshji was gifted to the predecessors of Bhalchandra Rao, they are serving the temple and are managing the affairs for the last 200 years. Moreshwar Rao, who was the father of Bhalchandra Rao, had also looked after the temple during his lifetime and remained in possession thereof. Moreshwar Rao expired about 50 years back. However, the date, month and year of his death is not known to Bhalchandra Rao. After the death of Moreshwar Rao, Bhalchandra Rao is in possession of the temple and is managing the affairs and offering prayers. It was claimed that not only Bhalchandra Rao has a right to offer prayer and manage the affairs but has also the right and title. It was claimed in paragraph 4 that Temple Shri Ganeshji is a private temple of the predecessors of Bhalchandra Rao and in the same capacity, Bhalchandra Rao is in possession of the property in dispute and no other person has any right or title over the temple in question. Land appurtenant to temple was given on *maufi* and disputed property is within the limits of *Dharmada maufi*. In the revenue record, Temple Shri Ganeshji was recorded as *Maurusi Krishak* along with the name of predecessors of Bhalchandra Rao and now name of Bhalchandra Rao is mentioned. In the year 1947, Gwalior *Zamindari* came to an end and Madhya Bharat Krishakadhikar Vidhan, Samvat 2007 came into force, and accordingly, temple got the rights of *Pakka Krishak* and after the

commencement of M.P.L.R. Code, Temple Shri Ganeshji became the *Bhumiswami* and agriculturist in possession. It was claimed that proceedings under the Ceiling Act were also initiated and by treating the land belonging to the temple, the land in question was exempted from the provisions of Ceiling Act. It was the case that the State Government, without any information to the plaintiff, started proceedings for auctioning the land by treating it to be Government land. Accordingly, Bhalchandra Rao raised an objection and collected the revenue records, then he came to know that the property in dispute had been recorded as Government land and only on that basis proceedings for auctioning the land were initiated. It was claimed that the disputed property was never Government property. The name of Collector as Manager was recorded without any prior notice or information to the plaintiff. Even the name of State Government as owner was recorded without any information to the plaintiff. No personal information was given to Bhalchandra Rao or to the temple. Hence, it was claimed that the property in dispute mentioned in Schedule-I to the plaint belongs to the temple and Bhalchandra Rao has a right to look after the same and manage the property. It was further pleaded that the State Government be restrained from initiating any proceedings for eviction or auctioning the property.

19. Appellant–State filed its written statement and denied the plaint averments. It was claimed that the property in dispute belongs to the *Aukaf* Department of State Government. Said property is appurtenant to temple. Claim of Bhalchandra Rao that temple is his personal and private property was denied. It was denied that the temple became the *Bhumiswami*. It was

claimed that the land belongs to the *Aukaf* Department and was given to the temple. It was further claimed that auction proceedings were rightly initiated for managing the temple and Bhalchandra Rao is functioning contrary to the interest of temple.

20. The Trial Court, after framing issues and recording evidence, decreed the suit.

21. Being aggrieved by judgment and decree passed by the Trial Court, appellant preferred an appeal which has been dismissed, and judgment and decree passed by the Trial Court was affirmed.

22. Challenging the judgments and decrees passed by the Courts below, it is submitted that plaintiff Bhalchandra Rao has relied upon one license, Exhibit P-9, to claim that temple in question was given to his predecessors on succession basis. It is submitted that from plain reading of said licence it is clear that property of the temple, including the idol of Shri Ganeshji, was stolen and it was decided that a new idol be consecrated and fresh licenses be issued. It is further submitted that Hindi translation of license Exhibit P-9 has been filed as Exhibit P-9C. It is further submitted that it is clear from the revenue records filed by plaintiff himself, Exhibits P-12 to P-16, that property was registered as *maufi sarkar*. Even otherwise, it is submitted that in Exhibits P-17, P-18, P-20 to P-23, P-25, P-28 to P-33, P-35 and P-36, property was recorded in the name of Temple Shri Ganeshji. It is submitted that *Pujari* or Manager cannot be treated as owner of the property of the Deity. Deity is always treated as a minor, and therefore, has to be represented by its next friend or guardian. Therefore, even if the name of

Bhalchandra Rao was recorded in the revenue record along with the temple as Manager, it would not make him owner of the property in dispute. It is further submitted that in the other *Khasra Panchasalas*, i.e., Exhibits P-63 to P-71, it was specifically mentioned that property is of *Maufi Aukaf* Department.

23. *Per contra*, appeal is vehemently opposed by counsel for respondents. It is submitted that since the license to offer prayer and manage the temple was given on succession basis, therefore, plaintiff Bhalchandra Rao and his predecessors are in possession for the last more than 200 years, and temple in question is the private property of Bhalchandra Rao and his predecessors, and accordingly, it is submitted that the Courts below did not commit any mistake by decreeing the suit.

24. Heard learned counsel for parties.

25. 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 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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> **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.

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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* [*Gauri Shankar* v. *Ambika Dutt*, 1948 SCC OnLine Pat 28 : AIR 1954 Pat 196] , 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 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* [*Sree Sree Kalimata Thakurani of Kalighat* v. *Jibandhan Mukherjee*, AIR 1962 SC 1329] . 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 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.

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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 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.

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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. It cannot be said that the acts of Nirmohi Akhara satisfy the legal standard of management and charge that is exclusive, uninterrupted and continuous over a sufficient period of time. Despite their undisputed presence at the disputed site, for the reasons outlined above, Nirmohi Akhara is not a shebait."

26. 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* [*Panchamsingh* v. *Ramkishandas Guru Ramdas*, 1971 SCC OnLine MP 26] , which has further been affirmed by *Kanchaniya* [*Kanchaniya* v. *Shiv Ram*, 1992 Supp (2) SCC 250] . 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 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* [*Kanchaniya* v. *Shiv Ram*, 1992 Supp (2) SCC 250] 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* [*Ramchand* v. *Janki Ballabhji Maharaj*, (1969) 2 SCC 313] , 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)* [*Ghanshyamdas* v. *State of M.P.*, 1995 Revenue Nirnaya (RN) 235] , *Sadashiv Giri* [*Sadashiv Giri* v. *Commr.*, 1985 RN 317] and *Shrikrishna* [*Shrikrishna* v. *State of M.P.*, 1995 SCC OnLine MP 161 : (2012) 4 MP LJ 466] does not lay down good law in view of binding precedent of the Division Bench of the High Court in *Panchamsingh* [*Panchamsingh* v. *Ramkishandas Guru Ramdas*, 1971 SCC OnLine MP 26] as also of this Court in *Kanchaniya* [*Kanchaniya* v. *Shiv Ram*, 1992 Supp (2) SCC 250] . 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* [*Panchamsingh* v. *Ramkishandas Guru Ramdas*, 1971 SCC OnLine MP 26] and also of this Court in *Kanchaniya* [*Kanchaniya* v. *Shiv Ram*, 1992 Supp (2) SCC 250] , 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 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."

27. 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."

28. Thus, it is clear that Manager or *Pujari* is the servant of Deity and property of temple belongs to Deity and not Manager/*Pujari*. Therefore, even if predecessors of plaintiff were appointed as *Pujari* or Manager, then plaintiff cannot claim property of the temple as his private property or his predecessors.

29. Now the next question for consideration is as to whether Bhalchandra Rao or his predecessors were ever appointed as *Pujari*/Manager or not?

30. In order to prove that predecessors of Bhalchandra Rao were appointed as *Pujari*/Manager on succession basis, plaintiff has relied upon one license Exhibit P-9 and Hindi translation of the same is Exhibit P-9C. From Exhibit P-9C, property of temple, including the Deity was stolen, and thereafter, it was decided to rebuild the property and to consecrate the new idol. Hindi translation of license, which has been marked as Exhibit P-9C, was proved by Balkrishna Anant Lokre (PW-2). He has specifically stated that license Exhibit P-9 is written in Maudi language and it is mentioned that temple in question was constructed by Subedar Chimnaji and in the night, thieves have committed theft and took away all the clothes, including idol, etc. In spite of police complaint, nothing was recovered, and accordingly, new license was issued in which it was mentioned that proceedings be reinitiated as per the previous procedures.

31. Thus, it is clear that plaintiff has relied upon only one license Exhibit P-9 and Hindi translation of same is Exhibit P-9C which speaks about the fact that after the consecration of new idol, things would continue as it was being done on earlier occasion. By no stretch of imagination, it can be said that license Exhibit P-9 was a license to manage and look after the temple because at the time when said document was executed, temple was not in existence because idol was already stolen and new idol was not consecrated.

32. Furthermore, as already pointed out, Manager or *Pujari* cannot be treated as owner of the property. *Pujari* is merely a servant of Deity, and thus, claim of Bhalchandra Rao that temple in question is private property of Bhalchandra Rao is incorrect and cannot be accepted. It is not the case of Bhalchandra Rao that temple in question was constructed by his predecessors out of their own personal money. On the contrary, it is the case of Bhalchandra Rao that temple in question was constructed about 200 years back by Peshji Naro Chimnaji Subedar.

33. Furthermore, suit was filed by Temple Shri Ganeshji. Temple is not a legal entity and in fact, Deity is the legal entity and on the date when the so-called license Exhibit P-9 was issued, there was no Deity in the temple as original Idol was already stolen and no new Idol was consecrated. There is nothing on record to show that right to offer prayer and manage the temple or property of the Deity was given on succession basis as original license has not been placed on record in spite of the fact that plaintiff in the plaint has specifically mentioned that original license are in possession of Bhalchandra

Rao.

34. The Supreme Court in **State of Uttarakhand and Anr. Vs. Mandir Shri Laxman Sidh Maharaj**, reported in **(2017) 9 SCC 579**, has held that necessary material pleadings ought to have been made to show as to how and what basis, plaintiff claimed his ownership over a heritage temple and land surrounding the temple. In absence of any pleadings in the plaint that *Pujari* built the temple, they cannot claim the temple to be a private temple.

35. The Supreme Court in the case of **Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and others**, reported in **(1969) 2 SCC 853**, has held that "the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, are relevant factors to establish whether a temple is a public temple or a private temple.

36. The Supreme Court in the case of **Tilkayat Shri Govindlalji Maharaj Etc. Vs. State of Rajasthan and others**, reported in **(1964) 1 SCR 561**, has held that the participation of the members of the public in the Darshan in the temple and in the daily acts of worship or in the celebrations may be a very important factor to consider in determining the character of the temple.

All these aspects are missing and have not been pleaded or proved by Bhalchandra Rao.

37. Thus, in absence of any cogent evidence to prove that predecessors of Bhalchandra Rao were given the right to offer prayer and managing the affairs of temple on succession basis, it cannot be said that Bhalchandra Rao

or his successors have any right to manage the affairs of temple or to offer prayer in Temple Shri Ganeshji.

38. Thus, the Courts below did not commit any mistake by holding that property as mentioned in Schedule-I of plaint is the property beloging to temple/Deity. However, the Courts below committed a material illegality by holding that Bhalchandra Rao and his successors have right to offer prayers and manage the affairs of temple on succession basis.

39. Furthermore, as already pointed out, *Pujari*/Manager is not the owner of property belonging to Deity but they are merely servants and have to maintain the property of Deity for the benefit of Deity. Bhalchandra Rao has not filed even a single document to show that how much income was derived from the land surrounding the temple and how much income was spent for renovation, maintenance and *prasad* of the temple. Thus, it is clear that Bhalchandra Rao has misused the income of temple by converting it for his personal use. Furthermore, in para 4 of plaint, it was claimed that the temple is a private property of Bhalchandra Rao and his predecessors. Thus, interest of Bhalchandra Rao was contrary to the interest of Deity, and therefore, the Courts below should not have allowed Bhalchandra Rao or his successors to continue to manage the affairs of Deity and to offer prayers.

40. Plaintiff himself has filed the Khasra Panchasalas to show that propert was mentioned as property of *Maufi Aukaf* Department. The Supreme Court in the case of **Pujari Utthan Avam Kalyan Samiti (supra)** has held that Collector cannot be a Manager of temple unless it is a temple vested in the State and the *Pujari* is only to perform puja and to maintain the

properties of Deity. It has also been held that name of *Pujari* cannot be mandated to be recorded either in the column of "ownership" or "occupancy" but may be record in "remarks" column. Therefore, even if the name of Bhalchandra Rao was recorded in the column of "ownership" along with the Temple Shri Ganeshji, then it would not confer any proprietary right to Bhalchandra Rao.

41. Under these circumstances, this Court is of considered opinion that as the interest of Bhalchandra Rao and his successors are contrary to the interest of Deity, therefore, they cannot be allowed to manage the affairs of Temple or to act as *Pujari*. Furthermore, no license has been filed to show that predecessors of Bhalchandra Rao were even given any right to act as *Pujari* and Manager on succession basis.

42. Furthermore, it is clear from the revenue record that Temple was recorded as of *Maufi Aukaf* Department. Therefore, it is held that Bhalchandra Rao or his predecessors and successors are not the owner of property of the Deity. Since the Temple is vested in the *Maufi Aukaf* Department of State Government, therefore, Collector shall be the Manager of Temple and he shall have power and authority to appoint *Pujari* (not on succession basis). However, the power/authority to manage the properties of Deity would be that of State Government through Collector as Manager.

43. Accordingly, it is held that Temple Shri Ganeshji and its properties vests in the State Government and Collector is the Manager of the Temple/Deity.

44. With aforesaid declaration, judgment and decree dated 31/03/2005

passed by First Additional District Judge, Ashoknagar, District Guna in Civil Appeal No. 46-A/2001, as well as judgment and decree dated 31/03/2000 passed by First Civil Judge, Class-II, Ashoknagar, District Guna in Civil Suit No. 130-A/1986, are hereby **set aside**, and suit filed by respondents/plaintiff is hereby dismissed.

45. Appeal succeeds and is hereby **allowed**.

46. Decree be drawn accordingly.

(G. S. AHLUWALIA)
JUDGE

AKS