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SUPREME COURT CASES

(1999) 5 SCC

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(BEFORE M. JAGANNADHA RAO AND UMESH C. BANERJEE, JJ.)

RAM JANKIJEE DEITIES AND OTHERS

.. Appellants;

a

Versus

STATE OF BIHAR AND OTHERS

.. Respondents.

Civil Appeal No. 107 of 1992[†], decided on May 11, 1999

A. Hindu Law — Religious and Charitable Endowments — Idol or deity — Concept of — Test is not whether the deity is recognised by any particular school of Agama Shastras but whether people believe in the deity's religious efficacy — God is formless and shapeless and it is only the human concept and consecration which gives it form — Consecration of the image — How to be performed — Kinds of images — Swayambhu and Pratisthita

b

B. Hindu Law — Religious and Charitable Endowments — Idol or deity — Is a juridical person capable of holding property — Two deities Ram Jankijee and Thakur Raja consecrated and landed property separately dedicated and possession thereof given to them through shebait — The deities located in two separate temples situated within the area of the land — Held, they must be treated as separate juridical persons and therefore were entitled to two units of land for the purposes of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (12 of 1962) — Tenancy and Land Laws — Ceiling on land — Idol or deity — Entitlement of

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C. Practice and Procedure — Precedents — Single Judge of High Court — While deciding an issue, he should look into the records and refer to earlier order of Division Bench of the same High Court on the same issue, if any — This is a matter of judicial propriety, not mandatory requirement

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A Mahant executed two registered deeds dedicating landed property to the extent of 81.14 acres to deities Ram Jankijee and Thakur Raja. Both the deities were separately given possession on the property through shebait. The deities are located in two separate temples situated within the area of the land. After the death of the Mahant, Petitioner 3 became the shebait of both the deities. The properties of the deities were also duly registered and enlisted with the Religious Trust Board and the same are under the control and guidance of the Board. On the basis of an enquiry report, the Deputy Collector in the matter of fixation of ceiling area by his order dated 18-11-1976 allowed two units to the deities on the ground that there are two temples to whom lands were gifted by means of separate registered deeds of samarpannamas and declared only 5 acres as excess land to be vested on to the State. But the Collector of the District passed an order recording therein that the entitlement of the trust would be one unit only. The revision petition subsequent thereto was rejected though on the ground of being hopelessly barred by the laws of limitation. Against the order of the Member Board of Revenue, wherein the rights and contentions of the petitioners to hold two units for two separate deities were rejected, the petitioner moved writ petition in the High Court for quashing of the orders passed by the Collector and the Member Board of Revenue. The High Court on 19-11-1984 allowed the writ

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[†] From the Judgment and Order dated 23-5-1991 of the Patna High Court in C.W. No. 5020 of 1984

a petition and granted the relief of two units as claimed by the petitioner. The judgment of the High Court became final and binding between the parties, there being no appeal therefrom. The High Court by its order dated 19-11-1984 observed: "Under the Hindu law images of the deities are juristic entities with the capacity of receiving gift and holding property. As such, when the gift is directly to an idol, each idol or deity holds it in its own right to be managed either by separate managers or by a common manager..."

b Subsequently however after about two years a writ petition was filed before the Supreme Court under Article 32 wherein one Badra Mahato prayed for issuance of a mandatory order as regards the allotment order in his favour. The Supreme Court, however, remitted the matter to the High Court with a direction that the petition before the Supreme Court be treated as a review petition before the High Court and be disposed of accordingly. In terms of the direction of the Supreme Court the Division Bench of the High Court directed that the matter should be placed before the Division Bench on 23-11-1987 subject to any part-heard matter and on 25-11-1987 the review petition was allowed and the order dated 19-11-1984 was recalled. The matter was however directed to be listed c before the appropriate Bench on 4-12-1987. The matter was not however placed in the list or heard for over two years and finally the matter came up for hearing before a Single Judge who in turn rejected the contention of the petitioner. The Single Judge observed:

d "... The image of the deity is to be found in Shastras. 'Raja Rani' is not known to Shastras. It is unknown in the Hindu pantheon. It is a particular image which is a juristic person. Idol is again an image of the deity. There cannot be a dedication to any name or image not recognised by the Shastras. Here, in the present case, the petitioners assert that the dedication is to both the deities 'Raja Rani' but none of these have been recognised by the Shastras."

e On behalf of the appellant it was contended that there was a Division Bench judgment recording therein the entitlement of the appellants to exemption and judicial propriety required the Single Judge to follow binding precedent of an earlier Division Bench judgment from the same High Court and more so, in the same matter. The issue as a matter of fact according to the appellant was no longer res integra and open for further discussion but the Single Judge went on to decide the issue once again notwithstanding the earlier finding as regards the idols' entitlement. Apart from the judicial propriety, the judgment of the Single f Judge was also criticised on the ground of being not sustainable as per provisions of the Hindu law. Question was whether "Ram Jankijee" and "Raja Rani" can be termed to be Hindu deities and separate juristic entities. The general question which arose was whether a deity being consecrated by performance of appropriate ceremonies having a visible image and residing in its abode is to be treated as a juridical person for the purpose of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961? g Allowing the appeal

Held :

h Images according to Hindu authorities are of two kinds: the first is known as swayambhu or self-existent or self-revealed, while the other is pratisthita or established. A swayambhu or self-revealed image is a product of nature and it is anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or pratistha but a man-made image requires consecration. This man-made image may be painted on a wall or canvas. While usually an idol is consecrated in a temple, it does not

appear to be an essential condition. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrates the image. (Paras 14 to 16)

Padma Purana, B.K. Mukherjea — *Hindu Law of Religious and Charitable Trusts*, 5th Edn., relied on

Addangi Nageswara Rao v. Sri Ankamma Devatha Temple, (1973) 1 AWR 379 (AP); Bhupati Nath Smrititirtha v. Ram Lal Maitra, ILR (1909) 37 Cal 128 : 14 CWN 18, approved

Board of Commrs. for H.R.E. v. Pidugu Narasimham, (1939) 1 MLJ 134 : AIR 1939 Mad 134; T.R.K. Ramaswami Servai v. Board of Commrs. for the H.R.E., ILR 1950 Mad 799; Venkataramana Murthi v. Sri Rama Mandhiram, (1964) 2 An WR 457 (DB); Poohari Fakir Sadavarthy v. Commr., H.R. & C.E., AIR 1963 SC 510 : 1962 Supp (2) SCR 276, cited

God is omnipotent and omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in the images of the supreme being. It is the human concept of the Lord of the Lords — it is the human vision of the Lord of the Lords. How one sees the deity, how one feels the deity and recognises the deity and then establishes the same in the temple depends upon however performance of the consecration ceremony. The Shastras do provide as to how to consecrate and the usual ceremonies of sankalpa and utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. It is customary that the image is first carried to the shani mandap and thereafter the founder utters the sankalpa mantra and upon completion thereof the image is given a bath with holy water, ghee, dahi, honey and rose water and thereafter the oblation to the sacred fire by which the pran pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. In the conception of Debutter, two essential ideas are required to be performed: in the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with the natural personality of the shebait, being the manager or being the Dharamkarta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. (Para 19)

Hindu law recognises a Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. (Para 11)

Pramatha Nath Mullick v. Pradyumna Kumar Mullick, (1925) 52 IA 245, relied on

Rambrahma Chatterjee v. Kedar Nath Banerjee, (1922) 36 CLJ 478, 483, cited

On the factual score there are temples — in one there is "Jankijee" and in the second there is "Raja Rani" but the deity cannot be termed to be in a fake form and this concept of introduction of a fake form, it appears, is a misreading of the provisions of Hindu law texts. What is required is human consecration and in the event of fulfilment of the rituals of consecration, divinity is presumed. Even though admittedly there are two idols, but the Single Judge thought it fit to ascribe one of them as fake, which is wholly unwarranted an observation and the finding devoid of any merit whatsoever. The factum of two idols cannot be

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denied and as such question of deprivation of another unit to the second idol does not and cannot arise. Under the provisions of the Bihar Land Ceiling Act in the event there are two idols capable of being ascribed juridical personality, two units ought to be granted rather than one as has been effected by the Single Judge. (Para 20)

Lakshmi Narain v. State of Bihar, 1978 BBCJ 489 : AIR 1978 Pat 330 : 1978 BLJR 671, approved

Petitioners 1 and 2, the two deities, are entitled to individual grant and thus entitlement for two units to be noted in the records of the Government and exemption of 75 acres total land only would be made available to the petitioners and the balance 5 acres of land be made available to the Government and the State Government would be at liberty to deal with the abovenoted five acres of land in accordance with the law. (Para 24)

Suggested Case Finder Search Text (*inter alia*):

hindu (idol or deity)

R-M/21107/C

Advocates who appeared in this case :

D. Goburdhun, Advocate, for the Appellants;

B.B. Singh, Advocate, for the Respondent.

Jitendra Sharma, Senior Advocate (Ms J. Ahmed and P. Gaur, Advocates, with him) for Respondents 6 to 27.

Chronological list of cases cited

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| 2. (1973) 1 AWR 379 (AP), <i>Addangi Nageswara Rao v. Sri Ankamma Devatha Temple</i> | 58b-c |
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| 4. AIR 1963 SC 510 : 1962 Supp (2) SCR 276, <i>Poohari Fakir Sadavarthy v. Commr., H.R. & C E.</i> | 59a |
| 5. ILR 1950 Mad 799, <i>T.R.K. Ramaswami Servai v. Board of Commrs. for the H.R.E.</i> | 58e-f |
| 6. (1939) 1 MLJ 134 : AIR 1939 Mad 134, <i>Board of Commrs. for H.R.E. v. Pidugu Narasimham</i> | 58d |
| 7. (1925) 52 IA 245, <i>Pramatha Nath Mullick v. Pradyumna Kumar Mullick</i> | 56c-d |
| 8. 1922) 36 CLJ 478, 483, <i>Rambrahma Chatterjee v. Kedar Nath Banerjee</i> | 56e-f |
| 9. ILR (1909) 37 Cal 128 : 14 CWN 18, <i>Bhupati Nath Smrititirtha v. Ram Lal Maitra</i> | 59g |

The Judgment of the Court was delivered by

BANERJEE, J.— The core question that falls for consideration in this appeal, by the grant of special leave, is whether a deity being consecrated by performance of appropriate ceremonies having a visible image and residing in its abode is to be treated as a juridical person for the purpose of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962).

2. On a reference to the factual backdrop, the records depict that one Mahanth Sukhram Das did execute two separate deeds of dedication in

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December 1950, and duly registered under the Indian Registration Act, dedicating therein the landed properties to the deities "Ram Jankijee" (Appellant 1) and Thakur Raja (wrongly described in the records of the High Court as "Raja Rani") (Appellant 2). Both the deities were separately given the landed property to the extent of 81.14 acres of land and in fact were put in possession through the shebait. After however the death of the aforesaid Mahanth Sukhram Das, Petitioner 3 became the shebait of both the deities. The properties of the deities were also duly registered and enlisted with the Religious Trust Board and the same are under the control and guidance of the Board.

3. Be it noted that both "Ram Jankijee" and "Raja Rani" (for convenience sake since the High Court referred to the deity as such in place and stead of Thakur Raja) are located in two separate temples situated within the area of the land.

4. On the basis of an enquiry report, the Deputy Collector in the matter of fixation of ceiling area by his order dated 18-11-1976 in Ceiling Case No. 222/76-77 allowed two units to the deities on the ground that there are two temples to whom lands were gifted by means of separate registered deeds of samarpannamas and declared only 5 acres as excess land to be vested on to the State. The Collector of the District however came to a different conclusion to the effect that mere existence of two temples by itself cannot be said to be a ground for entitlement of two separate units under the Act, since the entire property donated to the two units is being managed by a committee formed under the direction of the Religious Trust Board and prior conferment of the managerial right on only one person and there being no evidence on record to show that the property donated to the deities are to be managed separately, having separate account, question of recommendation for exemption under Section 5 and entitlement of two units would not arise. As a matter of fact the Collector passed an order recording therein that the entitlement of the trust would be one unit only. The revision petition subsequent thereto however was rejected though on the ground of being hopelessly barred by the laws of limitation.

5. The records depict that against the order of the Member Board of Revenue, wherein the rights and contentions of the petitioners to hold two units for two separate deities were rejected, the petitioner moved the Patna High Court in Writ Petition No. 5020 of 1984 for quashing of the orders passed by the Collector and the Member Board of Revenue. The record further depicts that the High Court on 19-11-1984 allowed the writ petition and granted the relief of two units as claimed by the petitioner. The judgment of the High Court became final and binding between the parties by reason of the factum of there being no appeal therefrom.

6. Subsequently however after about two years a writ petition was filed before this Court under Article 32 of the Constitution being Civil Writ No. 52563 of 1985 (*Badra Mahato v. State of Bihar*) wherein one Badra Mahato prayed for issuance of a mandatory order as regards the allotment order in

a favour of the petitioner (the aforesaid Badra Mahato). This Court, however, remitted the matter to the High Court with a direction that the petition before this Court be treated as a review petition before the High Court and be disposed of accordingly.

b 7. On 21-10-1987 in terms of the direction of this Court the Division Bench of the High Court directed that the matter should be placed before the Division Bench on 23-11-1987 subject to any part-heard matter and on 25-11-1987 as the chronology depicts the review petition was allowed and the order dated 19-11-1984, was recalled. The matter was however directed to be listed before the appropriate Bench on 4-12-1987. The matter was not however placed in the list or heard for over two years and finally the matter came up for hearing before the learned Single Judge who in turn has rejected the contention of the petitioner and hence the appeal before this Court.

c 8. Before proceeding with the matter any further, it would be convenient to note that while on a review of the order, the Division Bench of the High Court has been pleased to recall its earlier order dated 19-11-1984, but the observations pertaining to the entitlement of two idols seems to be apposite. The High Court in its order dated 19-11-1984 observed:

d "... This aspect of the matter has been considered by a Bench of this Court in the case of *Lakshmi Narain v. State of Bihar*¹ where it has been pointed out that once endowment is separate in the names of separate deities the legal ownership under the endowment vests in the idols; the matter would have been different if the endowment was to any math in which there were two deities. From the order of the learned Collector itself it appears that the two endowments were made in the name of the two deities on whose behalf claims have been made. It is settled by several pronouncements of the Judicial Committee that under the Hindu law images of the deities are juristic entities with the capacity of receiving gift and holding property. As such, when the gift is directly to an idol, each idol or deity holds it in its own right to be managed either by separate managers or by a common manager...."

f 9. It is on this score that Mr Goburdhun, the learned advocate appearing in support of the appeal very strongly criticised the judgment of the learned Single Judge both on the count of not being sustainable as per the provisions of Hindu law as also on the question of propriety.

g 10. Mr Goburdhun contended that there is a Division Bench judgment recording therein the entitlement of the appellants to exemption and judicial propriety requires one learned Single Judge to follow a binding precedent of an earlier Division Bench judgment from the same High Court and more so, in the same matter. The issue as a matter of fact according to Mr Goburdhun was no longer res integra and open for further discussion but the learned Single Judge went on to decide the issue once again notwithstanding the earlier finding as regards idols' entitlement. We are constrained to record that we find some justification for such a criticism. It is true that the earlier

1 1978 BBJ 489 : AIR 1978 Pat 330 : 1978 BLJR 671

Division Bench's order stands recalled and strictly speaking there may not be any necessity to refer to the same, but when there was an existing order of the Division Bench, judicial propriety demands that the learned Single Judge dealing with the matter ought to have referred to the same, more so when a contra view is being expressed by the learned Judge. It is a matter of judicial efficacy and propriety though not a mandatory requirement of law. The court while deciding the issue ought to look into the records as to the purpose for which the matter has been placed before the court. We are rather at pains to record here that judicial discipline ought to have persuaded the learned Single Judge not to dispose of the matter in the manner as has been done, there being no reference even of the earlier order. a
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11. Before proceeding with the matter any further apropos the judgment under appeal, it would be convenient to note however that Hindu law recognises a Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. The Privy Council in the case of *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*² observed: c

"One of the questions emerging at this point, is as to the nature of such an idol, and the services due thereto. A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status with the power of suing and being sued. Its interests 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. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established. d
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A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji, J. in *Rambrahma Chatterjee v. Kedar Nath Banerjee*³: 'We need not describe here in detail the normal type of continued worship of a consecrated image — the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessities and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest.' f
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The person founding a deity and becoming responsible for these duties is de facto and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the h

² (1925) 52 IA 245

³ (1922) 36 CLJ 478, 483

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a personal performance of the religious rites or — as in the case of Sudras, to which caste the parties belonged — by the employment of a Brahmin priest to do so on his behalf. Or the founder, any time before his death, or his successor likewise, may confer the office of shebait on another.”

12. The only question that falls for consideration is whether “Ram Jankijee” and “Raja Rani” can be termed to be Hindu deities and separate juristic entities and it is on this score the learned Judge in the judgment under appeal observed:

b “... The image of the deity is to be found in Shastras. ‘Raja Rani’ is not known to Shastras. It is unknown in the Hindu pantheon. It is a particular image which is a juristic person. Idol is again an image of the deity. There cannot be a dedication to any name or image not recognised by the Shastras. Here, in the present case, the petitioners assert that the dedication is to both the deities ‘Raja Rani’ but none of these have been recognised by the Shastras.

* * *

d 11. The petitioners contended that Raja Rani are the deities under the Hindu pantheon. The *Upanishads* are the highest sacred books of the Hindus. It was admitted that in *Kaushitaki-Brahamana-Upanishad*, IInd Chapter, ‘sloka 1’ as translated in Hindi by Pt. Sriram Sharma Acharya, in the book styled as *108 Upanishads*, the following has been said:

‘It is the statement of Rishi Kaushitaki that soul is God and the soul God is imagined as a king and the sound is his queen.’

12. The above translation has been seriously challenged by the respondents parcha-holders.

e It may be noticed that Pt. Sriram Sharma Acharya is not an authority on the subject....”

We are afraid the entire approach of the learned Single Judge was on a total misappreciation of the principles of Hindu law.

f 13. Divergent are the views on the theme of images or idols in Hindu law. One school propagates God having swayambhu images or consecrated images; the other school lays down God as omnipotent and omniscient and the people only worship the eternal spirit of the deity and it is only the manifestation or the presence of the deity by reason of the charm of the mantras.

g 14. Images according to Hindu authorities are of two kinds: the first is known as swayambhu or self-existent or self-revealed, while the other is pratisthita or established. The *Padma Purana* says: “The image of Hari (God) prepared of stone, earth, wood, metal or the like and established according to the rites laid down in the *Vedas*, *Smritis* and *Tantras* is called the established images ... where the self-possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed.” (B.K. Mukherjea — *Hindu Law of Religious and Charitable Trusts*, 5th Edn.) A swayambhu or self-revealed image is a

product of nature and it is anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or pratistha but a man-made image requires consecration. This man-made image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a shila — the shalagram form partaking the form of Lord of the Lords, Narayana and Vishnu. a

15. It is further to be noticed that while usually an idol is consecrated in a temple, it does not appear to be an essential condition. In this context reference may also be made to a decision of the Andhra Pradesh High Court in the case of *Addangi Nageswara Rao v. Sri Ankamma Devatha Temple*⁴. The High Court in para 6 of the Report observed: b

“6. The next question to be considered is whether there is a temple in existence. ‘Temple’ as defined means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship. That is the definition by the legislature to the expression ‘temple’ in Act 2 of 1927, Act 19 of 1951 and Act 17 of 1966. Varadachariar, J., sitting with Pandrang Row, J., in *Board of Commrs. for H.R.E. v. Pidugu Narasimham*⁵ construing the expression ‘a place of public religious worship’ observed: c

‘[T]he test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some superhuman power, it must be regarded as “religious worship”.’ d

To the same effect was the view expressed by Viswanatha Sastry, J., in *T.R.K. Ramaswami Servai v. Board of Commrs. for the H.R.E.*⁶: e

‘The presence of an idol, though it is an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in Section 9(12) of the Act. If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there they are likely to be the recipients of the blessings of God, then we have the essential features of a temple as defined in the Act.’ f

A Division Bench of this Court consisting of Justice Satyanarayana Raju (as he then was) and Venkatesam, J., in *Venkataramana Murthi v. Sri Rama Mandhiram*⁷ observed that the existence of an idol and a dhvajastambham are not absolutely essential for making an institution g

4 (1973) 1 AWR 379 (AP)

5 (1939) 1 MLJ 134 : AIR 1939 Mad 134

6 ILR 1950 Mad 799

7 (1964) 2 An WR 457 (DB)

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a temple and so long as the test of public religious worship at that place is satisfied, it answers the definition of a temple.

a Their Lordships of the Supreme Court in *Poohari Fakir Sadavarthy v. Commr., H.R. & C.E.*⁸ held:

'A religious institution will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to, or is for the benefit of, or is used as of right by the Hindu community, or any section thereof, as a place of religious worship.'

b To constitute a temple it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some superhuman power which they should worship and invoke its blessings."

c 16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas and the learned Judge it seems has completely overlooked this aspect of the Hindu Shastras — in any event, Hindus have in the Shastras "Agni" Devta, "Vayu" Devta — these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The ahuti to the deity is the ultimate — the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrates the image.

e 17. One cardinal principle underlying idol worship ought to be borne in mind

"that whichever God the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different Gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else".

(B.K. Mukherjea — *Hindu Law of Religious and Charitable Trusts*, 5th Edn.)

g 18. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of *Bhupati Nath Smrititirtha v. Ram Lal Maitra*⁹ wherein Chatterjee, J. (at p. 167) observed:

"A Hindu does not worship the 'idol' or the material body made of clay or gold or other substance, as a mere glance at the mantras and

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⁸ AIR 1963 SC 510 : 1962 Supp (2) SCR 276
⁹ ILR (1909) 37 Cal 128 : 14 CWN 18

prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or, according to some, the gratification of the deity.”

19. God is omnipotent and omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in the images of the supreme being. “The supreme being has no attribute, which consists of pure spirit and which is without a second being i.e. God is the only being existing in reality, there is no other being in real existence excepting Him” — (see in this context Golap Chandra Sarkar, *Sastri's Hindu Law*, 8th Edn.). It is the human concept of the Lord of the Lords — it is the human vision of the Lord of the Lords. How one sees the deity, how one feels the deity and recognises the deity and then establishes the same in the temple (*sic* depends) upon however performance of the consecration ceremony. The Shastras do provide as to how to consecrate and the usual ceremonies of sankalpa and utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: in the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with the natural personality of the shebait, being the manager or being the Dharamkarta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The *Deva Pratistha Tatwa* of Raghunandan and *Matsya* and *Devi Puranas* though may not be uniform in their description as to how pratistha or consecration of image does take place but it is customary that the image is first carried to the snan mandap and thereafter the founder utters the sankalpa mantra and upon completion thereof the image is given a bath with holy water, ghee, dahi, honey and rose water and thereafter the oblation to the sacred fire by which the pran pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however lend any assistance to the matter in issue and the principles of Hindu law seem to have been totally misread by the learned Single Judge.

20. On the factual score there are temples — in one there is “Jankijee” and in the second there is “Raja Rani” but by no stretch of imagination, the

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deity can be termed to be in a fake form and this concept of introduction of a fake form it appears is a misreading of the provisions of Hindu law texts.

- a What is required is human consecration and in the event of fulfilment of the rituals of consecration, divinity is presumed. There cannot be any fake deity: the whole concept of Hindu law seems to have been misplaced by the High Court.

21. In more or less a similar situation the Patna High Court in the case of *Lakshmi Narain v. State of Bihar*¹ observed:

- b “5. In this Court Mr Balbhadra Pd. Singh, learned counsel appearing in support of the application, strongly contended that the Revenue Authorities have entirely misdirected themselves in allowing only one unit to the petitioners under an erroneous impression that they being installed in only one temple and there being only one document of endowment in their favour, they could not get more than one unit.
- c Learned counsel contended that as a matter of fact, all the four deities were entitled to separate units in their own rights, notwithstanding the fact that no specified properties were endowed to them separately and that the endowment was made in their favour jointly.

* * *

- d 9. On consideration of the facts of this case and the relevant position in point of law, I come to the conclusion that all the four petitioners are separate juristic entities, properties being endowed to them just like any other human being. Learned counsel appearing for the respondents rightly conceded that had it been a gift to four individuals, they were entitled to four units separately, each of them being a ‘landholder’ within the meaning of clause (g) of Section 2 of the Act and entitled to a separate unit. If that be so, I do not see any reason for taking a view that the position should be different as the beneficiaries in this case are idols. It could not be contended that all the four petitioners would constitute one ‘family’ within the meaning of Section 2(ee) of the Act. The definition of ‘family’ in Section 2(ee) is as follows:

- f “‘Family’ means and includes a person, his or her spouse and minor children.”

- Even applying the above rigid test laid down in the Act, the first two petitioners, namely, Shri Lakshmi Narayan and Shri Mahabirji must be treated as separate units. And even assuming that the fourth petitioner, namely, Shri Parbatiji is considered to be a spouse of the third petitioner namely, Shri Shivajee, even then both these petitioners were entitled to one unit. In that view of the matter, the petitioners were entitled to at least three units, being in the same position of Hindu coparceners and, therefore, separate ‘landholder’ or ‘families’ in the eye of the law. The petitioners had, however, claimed only two units before the Revenue Authorities. It is, therefore, not possible to grant them any larger relief
- g of more than two units. Their purpose also will be served if only two
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units are allowed to them as the surplus land declared in this case is a little over 20 acres only."

22. It is needless to point out that even though admittedly there are two idols, but the learned Single Judge thought it fit to ascribe one of them as fake, which in our view is wholly unwarranted an observation and the finding devoid of any merit whatsoever. Quotations from English authors unfortunately are totally misplaced and the meaning misappreciated. The quotes are not appropriate and not apposite, as such we refrain ourselves from dilating thereon.

23. In the view as above, the factum of two idols cannot be denied and as such question of deprivation of another unit to the second idol does not and cannot arise. As regards the provisions of the statute, be it noted that there is no amount of controversy involved that in the event there are two idols capable of being ascribed juridical personality, two units ought to be granted rather than one as has been effected by the learned Single Judge.

24. We thus feel it expedient to record that Petitioners 1 and 2 (or Thakur Raja as the case may be) are entitled to individual grant and thus entitlement for two units to be noted in the records of the Government and exemption of 75 acres taal land only would be made available to the petitioners and the balance 5 acres of land be made available to the Government and the State Government would be at liberty to deal with the abovenoted five acres of land in accordance with the law.

25. Since no other issue was raised before us, the appeal is allowed. The order of the High Court stands set aside and quashed. No order however as to costs.

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(BEFORE A.P. MISRA AND N. SANTOSH HEGDE, JJ.)

RAMESH CHAND BANSAL AND OTHERS

.. Appellants;

Versus

DISTRICT MAGISTRATE/COLLECTOR

GHAZIABAD AND OTHERS

.. Respondents.

Civil Appeal No. 229 of 1997†, decided on May 11, 1999

A. Stamp Act, 1899 — S. 75 and S. 47-A (as introduced in U.P. in 1969) — U.P. Stamp Rules, 1942 — R. 340-A(a) — Power of Collector under, to fix circle rates — Requirement of supplying biennial statement of circle rates and average price of land etc., held, does not bar the Collector to give such rates differently for two years — Moreover, in presence of material indicating a regular pattern of increasing percentage of prices of land every year, the Collector can validly refer in his biennial statement to such increase in the following year — Hence, provision in impugned circular stating that costs shown therein would automatically be deemed increased

† From the Judgment and Order dated 7-7-1995 of the Allahabad High Court in W.P. No. 781 of 1994