
(2018) 08 MP CK 0046
In the Madhya Pradesh High Court
Case No : Second Appeal No.72 Of2001

Bada Ram Mandir Jharda

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 06-08-2018

Acts Referred:

Madhy Pradesh Public Trust Act, 1951 — Section 32
Madhy Pradesh Land Revenue Code, 1959 — Section 158(1)(b)
Evidence Act, 1872 — Section 68

Citation : (2018) 08 MP CK 0046

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

BEING aggrieved by judgment and decree dated 19.08.1999 passed in Civil Suit No.78-A/1999 by Civil Judge, Class-I, Mahidpur, District Ujjain and

judgment and decree dated 23.01.2001 passed in First Appeal No.78-A/2000 by Additional District Judge, Ujjain, the plaintiff has filed this second

appeal before this Court.

[2] Vide order dated 13.03.2001, this appeal has been admitted for final hearing on the following substantial questions of law :-

â??(1) Whether the property in dispute is a private property of a Poojari or belongs to the deity and whether the findings to that effect recorded by

the Courts below are perverse and contrary to the evidence on record ?

(2) Whether the appellant-plaintiff can be non-suited on the ground that u/s 32 of the M. P. Public Trust Act, 1951 the public trust has not been

registered being the property in the dispute is public property for the purposes of religious and charitable activities ?â??

[3] Facts of the case, in short, for effective disposal of this appeal are as under :-

(a) The appellant/plaintiff is a deity filed the suit through its Manager Mahant Biharidas disciple of Gangadas for the relief of declaration and permanent injunction. As per the pleadings in the plaint that in Village Jharda, Tehsil Mahidpur Bada Ram Mandir is situated and in which the deity of Ram, Laxman and Janki are there. Late Mahant Biharidas is a Priest in the temple under master disciple tradition since last so many years. The temple is situated over the land Khata No.286 comprising land of 6 different numbers, total area 5.157 hectares. According to the plaintiff the temple is a private property and was built without any help from the Government. The land attached to the temple was given on lease by the Government. The temple and the lands are being managed under the master disciple tradition. The Naib Tehsildar issued a notice dated 10.08.1979 for giving the land of the temple on lease of 3 years and for the appointment of Management Committee to manage the affairs of the temple. The aforesaid notice gave cause of action to the plaintiff to file the suit. The plaintiff sought the relief of declaration that Shri Bada Mandir is a private temple and the Government has no right to interfere in the management and worship. The plaintiff sought the permanent injunction to the effect that the Government be restrained to interfere into worship and management of the temple and the possession of the agricultural land and injunction be granted to close the proceedings of Case No.73-B 121/78-79. During pendency of the suit, Mahant Biharidas has expired and the name of Rajendradas was mutated.

(b) The defendants/State filed the written-statement by submitting that in the revenue record name of Collector, Ujjain had been mutated since 1975, therefore, the suit of the plaintiff is time barred. The plaintiff obtained the said land on lease, therefore, he be estopped to claim relief of declaration and injunction. The temple is a Government temple and the property of the temple is being misused by the Priest, therefore, it has become necessary to record the name of the Collector as manager and take the management of the temple.

(c) On the basis of the pleadings, the learned

(d) In support of the plaint, the plaintiff examined Balakdas as PW-1; Rajendradas as PW-2 and Shyamdas as PW-3 and got exhibited 16 documents as Exs. P/1 to P/16. In defence, the defendants examined Vijay Singh as DW-1

and Ramprasad as DW-2 and got exhibited 3 documents as Exs. D/1 to D/3.

(e) The learned Civil Judge considered the issue whether Bada Ram Mandir is a private property of the plaintiff or a Government temple ? At the

very outset the Court has recorded the finding that it is not a Government temple. Thereafter the Trial Court considered whether it is a private temple

or a public temple. After appreciating the evidence came on record, the learned Civil Judge came to the conclusion that it is a public temple and not

private temple of the plaintiff. The land attached to the temple is not the private land of Mahant or Priest. The plaintiff is in possession of temple as

well as the land in the capacity of Priest. The actual owner of the property is Bada Ram Mandir and Rajendradas is using the property as a Priest and

surplus land as lease holder of the Government. Vide judgment and decree dated 19.08.1999, the suit has been dismissed.

(f) Being aggrieved by the aforesaid judgment and decree, the unsuccessful plaintiff preferred an appeal and that too has been dismissed by the first

appellate Court vide judgment and decree dated 23.01.2001. Hence, the present second appeal before this Court.

[4] So far as the Issue No.2 is concerned, the learned Civil Court has held that the plaintiff cannot bring the suit for want of registration of the Public

Trust under Section 32 of the M. P. Public Trust Act, 1951. It was not the issue before the Court as to whether the suit which is filed by the

unregistered public trust is maintainable or not. The plaintiff sought the declaration that he is owner of the temple and in possession of the land. Even it

was not the case of the defendants that it is a public trust and the temple and the land are the property of public trust. The Civil Court was required to

give finding whether the suit property is a private property or Government property. Therefore, the Trial Court has wrongly given the finding that the

suit is not maintainable for want of registration under Section 32 of the M. P. Public Trust Act, 1951. Therefore, Issue No.2 is answered in favour of

the plaintiff.

[5] Shri A.S.Garg, learned Senior Counsel appearing on behalf of the appellant submitted that the land was given to Gangaramdas Guru Ayodhyadas

Bairagi vide Exs.P/10 and P/11. The name of Gangaram was recorded in Column No.1 under the head of 'Inamdar'. Thereafter vide Ex.P/11

the name was further recorded in the record of Patta Bandobast. In support of his contention he has placed reliance over the judgment of this Court

passed in the case of State of M.P. v/s Vijaya Bai [2012 (1) MPLJ 672] and judgment passed in the case of Murti Shri Khedapati Hanumanji Mandir

v/s Collector and another [Second Appeal No.522 of 2005 decided on 09.04.2013]. In the aforesaid cases, similar type of entry made in Ex.P/10 was

considered and held that the land was given to Inamdar whose name is recorded in Column 1. Had the land was given to the deity then certainly the

name of deity would have been mentioned in Column 1 and after coming into force M. P. Land Revenue Code, 1959 [in brief the Code of

1959] w.e.f. 02.10.1959, he became the Bhumiswami under Section 158 (1) (b) of the Code of 1959.

[6] Shri Garg, learned Senior Counsel further submitted that the name of Collector was wrongly entered in the revenue record as Manager by virtue

of the Circulars of the State Government dated 12.11.1992 and 21.03.1994. Both the circulars have been quashed by this court in the case of State of

M.P. v/s Pujari Utthan Avam Kalyan Samiti [2016 (2) R. N. 170]. In support of his contention, he has also placed reliance over the judgment passed

by this Court in the case of Shrikrishna v/s State of M.P. [2012 (4) MPLJ 466] in which it is held that the person who was Inamdar has been

recognized as Bhumiswami under M. P. Land Revenue Code, 1959. In the case of Anant Kibe v/s Purushottam Rao [1985 R. N. 107], the Apex

Court has held that the Inam land held by Inamdar becomes the Bhumiswami of the land.

[7] Shri Garg, learned Senior Counsel has concluded his argument by submitting that the plaintiff Rajendradas has become the Bhumiswami of the

temple as well as the land by virtue of Section 158 (1) (b) of the Code of 1959 as the name of his master was recorded as Inamdar in Exs. P/10 and

P/11 and he is continuous possession by virtue of Will of Mahant Biharidas (Ex. P/1) in his favour. Hence, prayed that the judgment and decree be

set-aside and Question No.1 be answered in favour of the plaintiff by declaring that temple is a private temple and the Government has no right into

the possession.

[8] Shri L.N.Soni, learned Deputy Advocate General appearing on behalf of the Respondents/State submitted that in the suit name of the plaintiff is

described as Shri Bada Ram Mandir through Mahant Biharidas. The plaintiff sought the relief of declaration that the temple is a private temple,

therefore, Rajendradas through Biharidas cannot claim his title over the temple and the land. The burden lies on the plaintiff to establish that the temple

is a private temple. The lands were given to the Mahant by virtue of her services in the temple. The plaintiff has failed to produce any convincing

evidence before the Courts below to establish that the temple was constructed by Gangaram or his Master Ayodhya Prasad. In Ex.P/11 the name of

Kashtkar is written as Shri Ram Mandit nor the Ayodhya Prasad and by Ex.P/10 the only land was given, not the temple. In support of his contention,

he placed reliance over the judgment of Apex Court passed in the case of Goswami Shri Mahalaxmi Vahuji v/s Shah Ranchhoddas Kalidas [AIR 1970

SC 2025] in which the Apex court has held that the evidence adduced by the plaintiffs in proof of the fact that the temple in question is a public temple

or is a private temple are liable to be considered as per criteria laid down for determination by the Court. He has further placed reliance over the

judgment Division Bench of this Court in the case of Ramhet v/s Mandir Shri Laxminarain [AIR 1976 MP 216] in which it is held that the land given

as Muafi Devasthan i.e. rent free grant to a Devasthan (Temple) is to be presumed that the temple would be public religious institution. This burden

will be upon the plaintiff to prove that it is a private institution. He further submitted that the plaintiff has failed to prove that the temple is a private

temple. Therefore, learned Courts below have rightly dismissed the suit as well as the appeal and accordingly the present appeal is also liable to be

dismissed as there is no perversity in the finding to the effect that the temple is a public temple.

[9] The question of law framed by this Court for determination of this appeal is whether the property in dispute i.e. temple is a private property of a

Poojari or belongs to the deity and the finding recorded by the Courts below are perverse and contrary to the evidence on record ? In order to

examine the perversity of the impugned judgments, it is required to re-examine the evidence brought by the plaintiff in support of the pleading as well

as the relief claimed in the suit.

[10] That Shri Bada Ram Mandir filed the suit through Manager Mahant Late Biharidas for the reliefs of declaration and permanent injunction in

respect of suit property i.e. temple. According to the plaintiff, the land Khata No.286 comprising land of 6 different numbers, total area 5.157 hectares

is of the ownership and in possession of Bada Ram Mandir. The said temple and the Bawadi were constructed without taking any financial assistance

from the then Government. The Mandir is being maintained under master disciple tradition and accordingly the temple is a private temple. Being a

private temple, the plaintiff i.e. Mahant Biharidas is having right to worship and to manage the agricultural land and the Government has no right to

interfere. The plaintiff sought the reliefs of declaration in respect of Bada Ram Mandir as a private temple and the Government is not having any right

to interfere into the worship and its maintenance. The plaintiff sought permanent injunction in respect of interference in the worship, maintenance and

in the possession of agricultural land. Therefore, the plaintiff is seeking declaration in respect of the temple only that it is a private temple. Both the

Courts below have examined the evidence and concurrently held that the plaintiff has failed to produce any documentary evidence to establish that the

temple was constructed by his predecessors with assistance from Government or any one else. PW-1 has placed reliance over the codex in which it

was written that the temple was got constructed by Ayodhyadas Bairagi. But said codex was not produced before the Court. Therefore, the Courts

have rightly declined the oral evidence. Therefore, except oral evidence nothing has been produced to prove that the temple was got constructed by

Ayodhyadas Bairagi to become a private temple.

[11] The plaintiff has placed reliance over Ex. P/10 i.e. "Parcha Babat Tahkikat Inam Jameen" by which certain lands were given to

Gangaramdas Guru Ayodhyadas Bairagi in lieu of worship in Shri Ram Mandir. Likewise vide Ex.P/11 i.e. "Patta Bandobast" certain lands were

recorded in the name of Kastkar Shri Ram Mandir. From Exs. P/10 and P/11 it is established that when the lands were given to Gangaramdas Guru or

Ayodhyadas Bairagi or to Shri Ram Mandir by the Government, the temple was already there. As per the entries made in Exs. P/10 and P/11 the

lands were given to Gangaramdas Guru Ayodhyadas Bairagi in lieu of their services as Priest in the temple. The Government gave the lands in order

to give services in the temple as the temple was not the private property of Ayodhyadas Bairagi. Therefore, according to Exs. P/10 and P/11 it cannot

be held that the temple is a private temple of Mahant Late Biharidas under the master disciple tradition. Therefore, there is no perversity in the

findings recorded by both the Courts below.

[11] Shri A.S.Garg, learned Senior Counsel has heavily placed reliance over the judgment passed by this Court in the case of Vijaya Bai (supra) and

Murti Shri Khedapati Hanumanji Mandir (supra). In the aforesaid two appeals, the suits were filed seeking declaration of Bhumiswami right of

agricultural lands. The High Court has placed reliance over the entry made in â?? Parcha Babat Tahkikat Inam Jameenâ? and held that the land was

given to the plaintiff in â??Inamâ? by the then Holkar State. In the present case Mahant Biharidas ought to have joined himself as plaintiff No.2 to

seek declaration in respect of the land but there is no such relief of declaration sought in the plaint in respect of the land. Only the relief of permanent

injunction has been sought for the land over which the temple was constructed. The learned Courts have also rightly disbelieved the Will (Ex. P/1) as

the same has not been proved under Section 68 of the Indian Evidence Act.

[12] The Division Bench of this Court in the case of Ramhet (supra) has held that the temple would be a public religious institution and for that

reasons Muafi was granted to it. The burden will be upon the plaintiff to prove that it is a private institution. Para 7 of the order is reproduced below :-

â??7. However, for the purposes of the present case, it is not necessary to express any considered opinion on the question whether the comma, after

the word 'public' has the effect of separating it from religious or charitable, so that even a private religious institution and every public institution

irrespective of its nature, is also included in entry (viii) of Section 168 (2). So far as the present case is concerned, the land is admittedly 'muafi

Devasthani' i.e. rent free grant to a 'Devasthan' (Temple). By its very nature it must be presumed that the temple would be a public religious institution

and for that reason muafi was granted to it. In the case of a muafi Devasthan, the burden will be upon him to prove that it is a private institution, who

will so allege. The petitioner did not prove nor allege anywhere that it is a private institution. Even in the writ petition before us a vague and, sweeping

objection was taken that 'Mandir Shri Laxminarayan is not a public charitable or religious institution. It is not specifically alleged that it is private

institution.â??

[13] In the case of *Goswami Shri Mahalaxmi Vahuji* (supra), the Apex Court has laid down the distinction between public temple and the private

temple. Para 15, 16 and 17 of the judgment are reproduced below :-

15. Though most of the present day Hindu public temples have been found as public temples, there are instances of private temples becoming

public temples in course of time. Some of the private temples have acquired great deal of religious reputation either because of the eminence of its

founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public

temples. Public temples are generally built or raised by the public and the deity installed to enable the members of the public or a section thereof to.

offer Worship. In such a case the temple would clearly be a public temple. If a temple is proved to have originated as a public temple, nothing more is

necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost

in antiquity then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is

decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as :--

(1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?

(2) Are the members of the public entitled to worship in that temple as of right ?

(3) Are the temple expenses met from the contributions made by the public ?

(4) Whether the *sevas* and *utsavas* conducted in the temple are those usually conducted in public temples ?

(5) Have the management as well as the devotees been treating that temple as a public temple ?

16. Though the appearance of a temple is a relevant circumstance, it is by no means a decisive one. The architecture of temples differs from place to

place. The circumstance that the public or a section thereof have been regularly worshipping in the temple as a matter of course and they can take part

in the festivals and ceremonies conducted in that temple apparently as a matter of right is a strong piece of evidence to establish the public character

of the temple. If votive offerings are being made by the public in the usual course and if the expenses of the temple are met by public contribution, it is

safe to presume that the temple in question is a public temple. In brief 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, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are factors that go to establish whether a temple is a public temple or a private temple. In *Lakshmana v. Subramania*(1) the Judicial Committee was dealing with a temple which was initially a private temple. The Mahant of this, temple opened it on certain days in each week to the Hindu public free to worship in the greater part of the temple, and on payment of fees in one part only. The income thus received by the Mahant was utilised by him primarily to meet the expenses of the temple and the balance went to support the Mahant and his family. The Privy Council held that the conduct of the Mahant showed that he had held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship and the inference was, therefore, that he had dedicated it to the public. In *Mundancheri Koman v. Achutan Nair*,(2) the Judicial Committee again observed that the decision of the case would depend on the inferences to be derived from the evidence as to the way in which the temple endowments had been dealt with and from the evidence as to the public user of the temples. Their Lordships were satisfied that the documentary evidence in the case conclusively showed that the properties standing in the name of the temples belonged to the temples and that the position of the manager of the temples was that of a trustee. Their Lordships further, added that if it had been shown that the temples had originally been private temples they would have been slow to hold that the admission of the public in later times possibly owing to altered conditions would affect the private character of the trusts. In *Deoki Nandan v. Murlidar*(3), this Court observed that the issue whether a religious endowment is a public. or a private one is a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and private endowment to the facts found. Therein it was further observed that the distinction between a public and private endowment is that whereas in the former the beneficiaries, which means the worshipers are specific individuals and in the later the general public or class thereof. In that case the plaintiff sought to establish the true scope of the dedication from the user of the temple by the public.

In Narayan Bhagwant Rao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors.

(4), this Court held that the vastness of the temple, the mode of its construction, the long user of the public as of right, grant of land and cash by the

Rulers taken along with other relevant factors in that case were consistent only with the public nature of the temple.

17. In examining the evidence adduced by the plaintiffs in proof of the fact that the temple in question is a public temple we have to bear in mind the

tests laid down by the courts for determining whether a given temple is a public temple or not.??

[14] In the aforesaid judgment the Apex Court has held that the evidence produced by the plaintiff is required to be examined in order to decide

whether the temple is a public temple or private temple while keeping in the mind the tests laid down by the Court. In the present case the plaintiff has

utterly failed to prove any material evidence to establish that the temple was constructed by the own funds by the then Gangaramdas Guru

Ayodhyadas Bairagi. Therefore, the plain and simple pleading in the plaint without any evidence in support cannot be accepted.

[15] So far as the recording of the name of Collector as Manager in the revenue record is concerned, the said issue has been settled by this Court in

the case of Pujari Utthan Avam Kalyan Samiti (supra) and Shrikrishna (supra). Para 10, 11 and 12 of Pujari Utthan Avam Kalyan Samiti are

reproduced below :-

??10. The learned Writ Court relying on the decision of the cases of State of MP & others v. Ghanshyamdas & others v. (supra), Kanchaniya v.

Sheoram (supra) and Pancham Singh v. Ramkishandas (supra) has held that right of Pujaris continued from their forefather, cannot be taken away by

executive instructions. There was no justification on the part of the State Government to advise to Revenue Commissioner to follow circular dated

21.03.1994, when the same was quashed. It is not in dispute that as per Clause 5 of the Land Records Manual in Column No.3 of Khasra Entries

deals with the name of occupier; Column No.4 deals with name of bhoomiswami or lessees or his representatives while Column No.12 deals with the

remarks. Undisputedly, the land, which is owned by the temple or deity or the land owned by temple or by the trust, name of the deity / temple or trust,

as the case may be, is required to be mentioned in Column No.3. If the temple is

managed by the Pujari, then keeping in view the law laid down by

this Court from time to time, his name is required to be mentioned as Pujari along with the name of deity.

11. The arguments of the learned Additional Advocate General that the State of Madhya Pradesh has received a number of complaints that the Pujari

whose name has been recorded in Khasra Entry, on the basis of the aforesaid Entries, they have alienated the property of the temple and to protect

the interest of the property of the temple, circular dated 07.06.2008 has been issued. It is also pointed out that as per past experience of the State

Government, Pujaris have misused their position and valuable property of the temple was transferred for negligible market price.

12. The law is well settled by the Division Bench of this Court in the cases of State of MP & others v. Ghanshyamdas & others (supra). The Apex

Court also in the case of Kanchaniya v. Sheoram (supra) held that Pujaris are not 'Kashtkar-Mourusi' on the basis of regulations and they can be

removed if they do not render their services properly. A Division Bench of this Court while allowing the writ petition, directed that the Government

has always the right to issue directions or preparing norms for preserving the property of deity. Similar direction was issued earlier in the year 1985 as

well as in 1995, when similar circular issued by the State Government was quashed.â??

Therefore, no direction is required as the same is binding on the State Government.

[16] Hence, there is no perversity in the findings recorded by the Trial Court. Hence, the question No.(1) is answered against the plaintiff and

accordingly the appeal is dismissed.

No order as to costs.