
(2011) 02 PAT CK 0099
In the Patna High Court
Case No : CWJC No. 1892 of 2005

Sri 108 Gopalji Isht Devta @ Sri Lalla Gopalji @ 108 Sri Lalla
Sri Gopalji

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2012) 1 PLJR 619

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Advocate : K.N. Singh, for the Appellant; Ajay, for the Respondent

Final Decision : Allowed

Judgement

Kishore K. Mandal, J.—Writ petition was filed by the petitioner deity through Sewait Smt. Brinda Devi W/o late Babu Rukmini Raman Singh. During the pendency of the application aforesaid, Brinda Devi (Sewait) died and an interlocutory application being I.A. No. 2836 of 2008 has been filed for substituting the name of Manoj Ranjan Singh son of Brinda Devi in place of original Sewait Smt. Brinda Devi (since dead). After hearing both the sides, the said application (I.A. No. 2836 of 2008) is allowed. Name of Smt. Brinda Devi as Sewait of petitioner deity is expunged. Manoj Ranjan Singh youngest son of late Brinda Devi is substituted in her place for the purpose of disposal of the present writ petition. Petitioner has questioned sustainability of order dated 30.8.2001 (Annexure-7) passed by respondent No. 3 in L.C. Case No. 6/1973-74 in so far as it relates to the land held by the petitioner deity. Notification dated 20.9.2001 (Annexure-8) issued u/s 11(1) of the Land Ceiling Act (for short the Act) is also under challenge. Order dated 2.2.2002 passed by respondent No. 2 in L.C. Appeal No. 8/2001 (Annexure-9) affirming order of the original Court dated 30.8.2001 is also under challenge. Petitioner has also called in question resolution of the respondent Additional Member, Board of Revenue dated 21.6.2004 (Annexure-10) passed in Revision Case No. 12/2002. Application

seeking review of order dated 21.6.2004 passed by respondent Additional Member, Board of Revenue was dismissed by order dated 28.7.2004 (Annexure-11) which has also been impugned.

2. Background facts in a nutshell are as follows:-

Petitioner is a deity/Ishta Devta of landholder Smt. Brinda Devi (since deceased). According to the case of the landholder, Smt. Brinda Devi, the same was established in the residential house/ premise of the landholder on Khesra No. 9094, Khata No. 2506 located in Village-Riga in the district of Sitamarhi. The genealogy of the family of landholder Brinda Devi (since deceased), widow of late Rukmini Raman Singh, has been set out in paragraph No. 3 of the writ petition. According to the landholder, a partition had taken place in the family well before 1959 and a memorandum of partition was drawn up and each member of the family was allotted share in lands. The said memorandum also set out details of properties dedicated to different deities viz. Sri Laxmi Mahamaya Jee, Sri Sitaram Shaligram Jee, Sri Radha Krishan Jee. Later, a dispute arose in the family and one Nalini Ranjan Singh (one of the sons of Rukmini Raman Singh) instituted a Title Suit being Title (Partition) Suit No. 45 of 1956 against his father and other coparceners. On 28.6.1956, the said suit ended in a compromise in terms whereof a decree was passed wherein 1/5th share in the property of the family was/were allotted to late Rukmini Raman Singh, Brinda Devi, W/o late Rukmini Raman Singh, plaintiff Nalini Ranjan Singh, Rajni Ranjan Singh and Rajiv Ranjan Singh. Brinda Devi thus became a raiyat in her own right and landholder within the provisions of the Act. Out of her own share aforesaid, Smt. Brinda Devi made oral "Samarpannama" of 39.84 acres of land in favour of her Ishta Devta, the petitioner deity, on 16.8.1958. She became Sewait of the deity. Deity was put in actual possession of the subject land. In the year 1962, Mutation application filed on behalf of the petitioner deity was allowed and Jamabandi No. 4691 was created followed by issuance of rent receipts (Annexures-1 and 1/2). However, lands of deity continued to be recorded in the name of Sewait Smt. Brinda Devi during the Revisional Survey operations which was made final in 1967-68. This necessitated execution of a deed of Ladavi (Annexure-2) on 4.9.1970 by Smt. Brinda Devi in favour of petitioner deity for 39.84 acres of land in order to allay any misgivings or future claim. Agricultural Income Tax returns were filed, on notice, in the name of petitioner deity for the period 1963-64. The assessment order was passed by the Income Tax Department in respect of petitioner deity on 28.12.1970 (Annexure-3). On 3.10.1970, Ceiling Authority issued notice and served on Brinda Devi on 17.10.1970 requiring her to file return which was filed. On adjudication, the claim of dedication of land in favour of deity was accepted and the proceeding was dropped on 15.4.1971 (Annexure-4). Nobody challenged the said order in appeal or revision and as such it became final. In 1972, Brinda Devi in her capacity as Sewait of the deity sold certain lands to others after seeking permission from the Consolidation Officer as the consolidation proceeding had already initiated. The vendees of those lands were put in possession after such sale(s). In the meantime, amendment was brought about

in the Ceiling Act by reason of Bihar Act 1 of 1973. The expression/term family/landholder was given fresh definition. Sections 4 and 5 of the original Act were also amended. Ceiling area to be retained by the family was reduced. After such amendment having been effected in the original Act, the Ceiling Authority served a fresh notice dated 28.8.1973 on her whereby she was required to file return. Accordingly, L.C. Case No. 6/1973-74 was initiated. At this juncture, it may be noted that Rukmini Raman Singh, husband of Smt. Brinda Devi had died on 30.8.1972. Returns on behalf of the landholder Smt. Brinda Devi was filed. An objection was raised with regard to initiation of fresh proceedings on the ground that her case was not affected by the amendment made in the Act. Respondent No. 2 by order dated 5.11.1973/9.4.1973 rejected all the objections filed on her behalf and directed for issuance of draft statements requiring the landholder to file objections which were thereafter filed, considered and rejected. This was followed by final publication of statement u/s 11(1) of the Act on 3.7.2004 (sic). Aggrieved by the aforesaid orders/issuance of final publication of statements, landholder Smt. Brinda Devi and others filed writ proceeding(s) before this Court vide C.W.J.C. No. 1042 of 1974 and analogous petitions wherein the vires of Bihar Act 1 of 1973 was also put in issue. The said matter was heard alongwith cognate writ petitions being C.W.J.C. No. 1041 of 1974 (Rajni Ranjan Singh and Others vs. The State of Bihar & Ors.) and C.W.J.C. No. 4043 of 1974 (Rajiv Ranjan Singh & Others vs. The State of Bihar & Ors.). This Court by order dated 14.12.1976 dismissed all the writ petitions (Annexure-5) but granted further opportunity to the landholder for filing objections. Aggrieved by the said order, Rajni Ranjan Singh and others preferred Civil Appeal(s) before the Supreme Court being Civil Appeal Nos. 354/356 of 1977 which was/were dismissed by order dated 22.8.1995 (Annexure-6). In 1976, landholder Brinda Devi voluntarily surrendered 11.25 acres of land which also include 3.71 acres of land which were got exchanged by her from the petitioner deity. Such surrendering of land by Smt. Brinda Devi was accepted by the Ceiling authority and acquired in terms of Section 15(1) of the Act. This was done to facilitate consolidation of holdings of the landholder (Smt. Brinda Devi) and petitioner deity. The aforesaid ceiling case being L.C. Case No. 6/ 1973-74 commenced from the stage of Section 10 wherein a draft publication showing a total of 136.2716 acres of land in the hands of the landholder was shown out of which 57.55 1/2 acres were found surplus. Such draft publication was made on 18.12.2000/19.12.2000. Landholder Smt. Brinda Devi filed objection u/s 10(3) in which a claim was raised that the land held by petitioner deity since 26.8.1958 be excluded from the ceiling proceeding. Respondent Ceiling Authority by order dated 30.8.2001 (Annexure-7) rejected the aforesaid objection of the landholder and found 69.18 acres of land surplus in the family of the landholder. This was followed by publication of final statement u/s 11(1) of the Act on 13.9.2001 (Annexure-8) showing 79.50 acres as surplus land in the family which included land(s) of the petitioner deity. Aggrieved over the aforesaid proceeding(s)/ orders, landholder namely Brinda Devi filed L.C. Appeal No. 8/2001. Respondent appellate authority by a proceeding dated 2.2.2002 (Annexure-9) rejected the said appeal. Feeling

aggrieved by the appellate order dated 2.2.2002, the landholder filed revision application before the respondent Board of Revenue which stood rejected by resolution dated 21.6.2004 (Annexure-10). An application seeking review of order dated 21.6.2004 (Annexure-10) was filed which was considered and rejected by another resolution dated 28.7.2004 (Annexure-11) of the Board of Revenue leading to filing of the present writ petition.

3. Dr. K.N. Singh, learned counsel appearing in support of the writ petition, while assailing the impugned orders, inter alia submitted that in view of the materials on record, all the three authorities under the Act erred in holding that there was no acceptable document or evidence anterior to 22.10.1959 or 9.9.1970 showing dedication of land in favour of petitioner deity and documents/evidence relating thereto were of post 22.10.1959 which were designed to defeat the provisions of the Act. It is submitted that an oral endowment according to Hindu Law is not necessarily invalid in absence of a registered document. What is relevant is that there must be real "Sankalp" and "Samarpan" and the endowed property must be completely given away or set apart and the owner thereof completely divested himself/herself of its ownership. Reliance for this proposition has been placed on a judgment of this Court rendered in the case of Harihar Prasad vs. Siri Gurugrath since reported in AIR 1930 Patna 610 and also on AIR 1984 Allahabad 72 (paragraph 8). It is further contended that the authorities under the Act also erred in holding that petitioner deity and Sri Radha Krishna Jee are one and the same deity/idol and as such no further remissions in the lands held by the landholder shall be granted as gift/dedication made in favour of Radhe Krishan Jee by the family of the landholder was accepted and allowed. It is argued that each deity in its particular image or form in the Hindu Pantheon would be juridical subject capable in law of holding properties. To elucidate this proposition, reliance has been placed on the case of Ram Jankijee Deities and Others Vs. State of Bihar and Others, . It is contended that apart from the aforesaid legal proposition there were/are several factual aspects available on record to demonstrate that the two deities were located distinctly. Arguing further, it has been contended that the authority under the Act committed further illegality in not taking into consideration other relevant circumstances indicative of consecration of property/land followed by "Sankalp" and "Samarpannama" made prior to 22.10.1959. Learned Counsel would further argue that if the State wanted to say that such dedication of property were inoperative then onus lay on the State heavily to prove or demonstrate by cogent evidence and/or circumstances. Such onus having not been discharged, the findings recorded in the impugned orders are fit to be set aside. Petitioner, in this connection, has referred to and relied upon on the judgment of this Court rendered in Kasi Singh vs. State of Bihar since reported in 1995(1) P.L.J.R. 819.

4. Per contra, Mr. Ajay, learned Standing Counsel, appearing on behalf of the State, submits that all the three Courts below have found that the dedication of property was not made prior to 22.10.1959 and there are circumstances/materials indicating that landholder remained in possession of the lands alleged

to have been consecrated after dedication. It is submitted in the case of Harihar Prasad (supra), this Court has found and held that whether a Hindu taking the "Sankalp" and dedicating the property to the deity divesting himself or herself completely of its ownership, can be seen and adjudged from corroborative circumstances which would depend on the particular facts of each case. In the case at hand, authorities have found, on appraisal of circumstances available on record, that the landholder did not divest herself of the ownership/possession of lands said to have been donated to the petitioner deity and as such claim made on behalf of the landholder Smt. Brinda Devi was found unsustainable in law. Such claim was made to defeat the provisions of the Act and thereby obtain an advantage by retaining lands in the name of petitioner deity. Adverting to the ratio laid down by this Court in Kasi Singh (supra), on which reliance has been placed by the writ petitioner, it is submitted that the law laid down therein shall not be applicable to the facts of the present case inasmuch as in the said case, gift was made by registered instrument within the grace period provided by the Act. It is fervently argued that law permitted such alienation and in the setting of those facts, it was found and held that if the State wanted to hold or say that such gift of property was inoperative then onus lay heavy on the State to prove/demonstrate by cogent and convincing circumstances or evidence. Learned counsel, however, did not dispute the proposition that "Sankalp" or "Samarpannama" to deity/idol under Hindu law is acceptable in Law and that each deity in the Hindu Pantheon would be a juridical entity capable in law of holding property independently.

5. I have heard the parties at great length and perused the materials on record. On a perusal of the order(s) passed by the respondent(s) particularly Addl. Collector (Annexure-7), it manifests that claim of the landholder Smt. Brinda Devi (since deceased) for deleting the lands donated to petitioner deity was rejected primarily on the following grounds:-

(i) Lands were found to have been alienated after 22.10.1959 and therefore, can be inquired into and annulled by the ceiling authorities if found to have been made to defeat the provisions of the Act. Authority under the Ceiling Act would in this regard also be acting within its bounds to inquire as a fact whether any such alienation/donation/consecration was made prior to 22.10.1959 as there was no registered instrument relating to said claim.

(ii) The rent receipt produced on behalf of the landholder in support of her contention of dedication of property in favour of the petitioner deity pertained to the period 1963-64 inasmuch as the document of title on which such Mutation, if any, was made has not been explained or brought on record by the landholder.

(iii) The deed of Ladavi was executed on 4.9.1970 (i.e. few days prior to 9.9.1970) which raises a serious doubt or apprehension about any such consecration in favour of petitioner deity prior to 22.10.1959. Further the deed of Ladavi was incapable of transferring right/title and interest in land apart from other deficiency in the said deed.

(iv) Husband of landholder namely late Rukmini Raman Singh had earlier claimed to have donated by a registered deed executed on 18.11.1954 in favour of deity Sri Radha Krishan Jee "Kuldevta" of the family and as such alleged dedication by his spouse constituting one family in favour of the same deity sounds thoroughly illogical and merits no acceptance.

6. In Harihar Prasad (supra) a Division Bench of this Court has held that an oral endowment according to Hindu Law is not necessarily invalid in the absence of a registered document. A Hindu, therefore, can create an oral dedication of immovable property in favour of an idol. However, in order to constitute a valid gift and dedication, there must be real "Sankalp" and "Samarpan". The endowed property must be completely given away and the owner must completely divest himself of its ownership. In order to constitute a valid gift, there must be circumstance to indicate an acceptance on the part of the donee. Since the aforesaid proposition has not been disputed by the parties, this Court is not delving into the said issue any more.

7. Learned counsel for the petitioner has argued that the premise that Sri Radha Krishan Jee and petitioner deity are one and the same may be true in one sense but in our Hindu Pantheon, different forms/images of one deity has found acceptance and if that be so then each form or image of a deity shall be a separate juridical entity or person capable in law to hold property. Hon"ble Apex Court had an occasion to deal with such issue in Ram Jankijee (supra) and held as under in paragraph 12 of the report:-

"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:-

"...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 recognized 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 recognized by the Shastras.

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-Brahmana-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.

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."

8. While dealing with the cardinal principle underlying idol worship, the Apex Court in the said report quoted the decision of the Calcutta High Court in the case of Bhupati Nath Smrititirtha vs. Ram Lal Maitra [ILR (1909)37 Cal. 128], Paragraphs 17 and 18 of the report (at page 59) are extracted hereunder:-

"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".

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 vs. Ram Lal Maitra 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 prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is sued 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 of presence of the deity or, according to some, the gratification of the deity"

9. Dealing further with the issue, it has been found that it is the human concept of the Lord of the Lords which 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 a temple depends upon the worshipper. It is to be noted here that the Hon'ble Supreme Court was dealing with a situation where endowments were made/created in favour of few deities including Ram Jankijee and Thakur Raja. Having considered the issue in all its ramifications, it was found and held that those deities were separate juridical entities capable to hold property separately. Thus, considering the ratio laid down in Ram Jankijee (supra) and taking into consideration the factual background of this case, there can be no hesitation in holding that Sri Radha Krishan Jee and petitioner deity are two separate legal entities each capable of holding land. Learned counsel for the petitioner, therefore, appears to be right in his submission that one of the premises on which existence of petitioner deity and dedication in favour thereof has been doubted by the authorities under the Act is misplaced. It is the positive

stand of the petitioner that these two deities exist on different plots of lands and in two sanctums which has not been disputed or doubted.

10. It is next contended that earlier to the initiation of fresh proceeding after the amendment effected by Bihar Act 1 of 1973, the existence of petitioner deity and dedication in favour of the said deity made by landholder (Brinda Devi) was accepted by order dated 1.10.1970 passed in Case No. 60 of 1970-71 (Annexure-4) and as such the respondents were not justified in reopening the aforesaid issue. Said submission of the petitioner seems to be misplaced. By reason of amendment brought about in the Act, the earlier proceedings initiated under the Original Act were declared to have effaced and/or wiped out. It appears that the said issue was also raised by the landholders in C.W.J.C. Nos. 1041, 1042 and 1043 of 1974 Reported in 1977 PLJR 453. This Court answered the issue in the following manner in paragraph 5 of the said judgment which is extracted hereinbelow:-

"5. The position, however, is now different. Section 19 of Bihar Act XXII of 1976 has added at the end of Section 13(3) of Bihar Act I of 1973 some crucial words. Those have already been quoted. The effect of the addition, which shall be deemed always to have been there, is that the legal fiction is only available in those cases where the action taken is not inconsistent with the provisions of Act I of 1973. If the order passed in particular case is inconsistent with the provisions of Act I of 1973, the legal fiction which has been created u/s 13 is not available. In the instant case it cannot be disputed, and it has, not been disputed, that the area of land in respect of which the petitioners have been found to be landholders was in excess of the ceiling area as fixed in Act I of 1973. In our view, therefore, the orders passed in the earlier ceiling cases started in the year 1970 and concluded in 1971 cannot be deemed to be orders passed under Act I of 1973-the orders not being consistent with the provisions of the said Act."

The said submission of the petitioner is, therefore not sustainable in law and is rejected.

11. It has been submitted on behalf of the petitioner that there are several other materials available on record which have not been properly evaluated and appraised by the authority under the Act. True it is that the lands donated in favour of the petitioner deity by "Sankalp" remained recorded in the revisional survey khatiyani in the name of landholder (Smt. Brinda Devi) but to allay any misgivings or future claim based on the aforesaid entry in the R.S. Khatiyani, a deed of Ladavi was executed by the landholder Brinda Devi on 4.9.1970 relinquishing all her claims and rights in respect to the lands donated to the petitioner deity and thereby accepting the existing claim of the petitioner deity based on "Sankalp" or "Samarpan" made by the petitioner landlord (Smt. Brinda Devi). It is submitted that much emphasis has been laid on the date of execution of deed of Ladavi in order to hold that such document was created only 5 days before 9.9.1970 which is the cut-off date. It is seen that such cut-off date was incorporated in the Act by reason of amendment made in the Act in the year

1976. In that view of the matter, one of the angles with which aforesaid document (deed of Ladavi) has been considered by the authorities under the Act is not logical. Learned counsel for the petitioner while conceding the fact that agricultural income tax proceeding was initiated on a notice issued sometimes in the year 1970 and pertained to period 1963-64 onwards, submits that while considering the said material, it has to be borne in mind that aforesaid proceeding was not creation of the landholder. The proceeding was initiated as per the provisions contained under the Act framed by the Parliament of India. The said order (Annexure-3) passed on 28.12.1970 was an order passed under the statutory provisions of the Central Act. This aspect of the matter has been lost sight of by the authority while rejecting the claim of the landholders for exclusion of lands donated in favour of petitioner deity. It is thus the submission of the petitioner that those factual aspects placed before the authority were not properly considered which has resulted in passing of order rejecting the claim of the petitioner deity. It is submitted that going by the ratio laid down by this Court in the case of Kasi Singh (supra), the State authorities have not been able to demonstrate by cogent evidence/material that endowment was made after 22.10.1959 and with the sole purpose of defeating the provisions of the Act. Learned counsel has, however, not disputed the proposition that any such alienation/endowment was really made before or after 22.10.1959 can also be inquired into by the authority in terms of the provisions of the Act.

12. On the other hand the stand of the State respondent is that all aspects of the matter brought before the authority were taken into consideration whereafter it was found that the lands continued to be recorded in the name of donor (landholder) at least till 1970 which prima facie demonstrate that the landholder/donor had not completely divested himself/herself of her right, title and interest in respect of the lands said to have been set apart and donated for the use of the petitioner deity. It is submitted that on what basis jamabandi was created in the name of the petitioner deity in the year 1962 has also intrigued the authorities indicative of underhand dealings. Even going by the case of the landholder, mutation of the name of the petitioner deity was not made when the Act in its original form was promulgated. It appears that on one hand land rents were paid in the name of petitioner deity on and after 1962/63 but in the survey records, the name of the land holder (Smt. Brinda Devi) continued to be recorded in respect of the lands in question at least till 1970 i.e. for more than 8 years thereafter. The revisional Court has found that the deed of Ladavi was not acceptable for diverse reasons. He, however, concedes that a deity in its particular form or image would be a separate and distinct legal entity under the Hindu Pantheon and if valid alienations have been made in favour of such deity, the same can be excluded from the land ceiling proceeding initiated against the landholder. It is also the stand of the State that ratio laid down in Kasi Singh (supra) shall not be applicable to the facts of the present case.

13. Submission of the learned counsel appearing on behalf of the State that ratio of the decision rendered in Kasi Singh (supra) shall not have application to the

facts of the present case has some legs to stand. It is noticed that in Kasi Singh (supra), this Court was confronted with a situation where the authorities had not allowed the objection of the landholder with regard to the alienation made in favour of deity by registered deed of gift executed during the grace period provided under the Act. In that situation, it was found and held that such denial can be made based on cogent evidence to show that the gift remained inoperative. That is not the case at hand. Therefore, the ceiling authority in the present case has to come to a conclusion based on preponderance of circumstances/materials.

14 In the light of submissions advanced on behalf of the parties and the pleadings available on record, it is to be seen that the angle or the perception with which the two deities namely Sri Radha Krishan Jee "Kuldevta" and petitioner deity was/were viewed by the authorities is contrary to the ethos of Hindu Religion and contrary to the view expressed by Hon"ble Apex Court in the case of Ram Jankijee (supra). In this regard, it further appears that the case of the landholder is specific that the two deities namely Sri Radha Krishna Jee and petitioner deity are located in two different and distinct sanctums situated on two different plots. The authorities have further doubted such oral endowment by the landholder on the ground that the documents produced in support of such claim and material on record indicate that donor did not divest herself of her/his title, interest and possession over the land and documents produced pertained to the period after coming into force of the Act in its original form. However, there appears to be some more material on record which required a consideration for reaching the conclusion either way. Let it not be forgotten that endowment of property in favour of a deity by a Hindu male/female can be made by "Sankalp" or "Samarpan". No registered document is necessary to be executed therefor. However, when a claim is laid based on the aforesaid happenings, the donor or the creator of the endowment has to demonstrate from relevant/attending circumstances that by such donation made in favour of a deity, he or she completely divested himself/herself of right, title, interest and possession on the land consecrated or set apart for the use of the deity. It is also seen that in the case at hand, there is no registered instrument creating such endowment and as such the corroborative circumstances/material(s) to prove complete setting apart of the land donated in favour of deity would assume greater significance. This Court has already found that one of the considerations made by the authorities for rejecting the claim of gift of land in favour of the petitioner deity is contrary to the view on the issue expressed by the Hon"ble Apex Court insofar as the form/image of a deity to be adorned by the worshipper of idol is concerned. This Court in pre-paragraphs has already held that the previous order passed in the ceiling proceeding accepting such gift to be valid and permissible in law shall not preclude or prejudice the authorities under the Act after amendment in the Act from taking a view different from that based on materials/circumstances on record. The petitioner, therefore, cannot be heard in support of the claim based on the aforesaid order (Annexure-4). It further appears from the foundational

facts asserted in the writ petition that by reason of a partition by memorandum drawn up by the co-parceners deities namely Laxmi Mahamaya Jee, Sri Sitaram Shaligram Jee and Sri Radha Krishan Jee were allotted separate lands. However, no such consecration of petitioner deity and setting apart lands for the said deity is deciphered therefrom. It is further seen that by reason of a compromise decree dated 28th June, 1956 (which is not in dispute) 1/5th share was allotted to each of the family members including the landholder Smt. Brinda Devi. If only a share is earmarked or defined as per the said compromise decree then it is to be seen and adjudged as to how specific plots of land can be donated in favour of the petitioner deity and put in possession thereof. No final opinion on this issue can be recorded by this Court in absence of the aforesaid compromise decree dated 28th June, 1956 passed in Title (Partition) Suit No. 45 of 1956 and submissions advanced thereon. This Court also finds from the materials on record that there is/are few more relevant facts/circumstances that may have impact on reaching conclusion with regard to the case/claim of the petitioner deity. I have already noticed the submissions of the petitioner that certain lands were sold by the landholders in the year 1972 as Shebait of the petitioner deity with the permission of the Consolidation Officer and part of the land exchanged with the deity by the landholder were surrendered and declared surplus by the authority. This Court, however, hastens to add that no relevant document in this regard has been produced by the petitioner and as such this Court cannot finally determine its view based on those circumstances/facts.

15 In view of my discussion made above, I am of the view that the matter requires fresh look by the authorities under the Act where the petitioner shall be at liberty to place on record all relevant documents in support of the claim which shall be considered by the authority while reaching to a conclusion based on appraisal of those material(s)/circumstance(s). This is deemed advisable since as found and held hereinabove, one of the views taken by the authority under the Act that Sri Radha Krishna Jee and petitioner deity is one and the same deity and thus not capable of holding property independently is not sustainable in law. Both the parties have agreed that in the event, this Court is inclined to remit the matter back for fresh consideration then the same should go to the respondent Collector who passed the appellate order (Annexure-9).

16. For the reasons noted above, the application is allowed. Orders passed by the respondent Board of Revenue as contained in Annexures-10 and 11 are quashed and set aside. The matter is remitted back to the appellate authority (respondent Collector, Sitamarhi) for fresh consideration of the matter. The petitioner is granted liberty to place on record all relevant documents in support of the claim which shall be considered by the said authority in accordance with law and the findings/observation made in this order. Respondent Collector is granted liberty to substitute his previous order dated 2.2.2002 (Annexure-9) passed in L.C. Appeal No. 8/2001 by a fresh order. This Court, while not interfering with the appellate order (Annexure-9) passed by the said respondent makes it plain that any finding recorded by the said authority in Annexure-9 shall

not prejudice the parties. Petitioner shall approach the respondent Collector with a copy of the present order within 5 weeks from today enabling him to dispose of the matter expeditiously. There shall be no order as to costs.