

(2001) 01 KAR CK 0095
In the Karnataka High Court
Case No : Writ Petition No. 3085 of 1998

Srikanta Datta

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Mysore Religious and Charitable Endowments Act, 1927 — Section 372 (1)

Citation : AIR 2001 Kar 373

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : C.K. Venkatesh, for the Appellant; Jayarama, General and A. Padmanabha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—Petitioner is aggrieved of the action of the respondent-Government in taking over the management and maintenance of Palace Muzrai Temples under G.O. R.D. 54-MLI-72 dated 28-9-1974 u/s 7 of the erstwhile Mysore Religious and Charitable Endowment Act, 1927 (in short called Act of 1927) by vesting the management in a Committee constituted in the impugned order has filed this writ petition seeking for issuance of a writ of certiorari to quash the impugned Government order Annexure "A" dated 28-9-1974 and subsequent orders of renewals and further issuance of a writ of mandamus or appropriate direction to the respondents 4 and 5 to hand over the physical possession of all the Palace Muzrai Temples and also the management records, jewellery etc., of these temples situate in and around Palace, and, also at Chamundi Hills, forthwith to the petitioner for the maintenance and management and further to declare that the petitioner is the shebait of these Palace Muzrai Temples having his hereditary right to maintain and administer them urging various facts and legal contentions.

2. Certain relevant and necessary facts and legal contentions urged on behalf of

the parties are stated as hereunder for the purpose of appreciating and considering the rival contentions by the learned counsel on behalf of the parties :--

By an order Nos. 92-96 MUZ-54-08.1 dated 27-10-1908, the erstwhile Maharaja of Mysore, placed the 12 institutions (temples) named therein under the control of his Palace Department, after removing them from the "Government Muzrai Department." The same were under the administration and management of the Maharaja with one officer to run these institutions vide Annexure "C" by an order No. 720-4-Muzrai 84.08.6 dated 20-1-1909, the erstwhile Maharaja placed 12 more institutions named therein under the Palace Department vide Annexure "D" and by another order No. 3523-6 Muzrai 617.19.2 dated 14-4-1920 Annexure "E". 5 more institutions named therein were placed under the Palace Department (Tasdiq i.e., maintenance to all of them to continue as before). In total 20 Institutions (or Temples) came under the Palace Department were called as "Palace Muzrai Temples." Since then, the said Temples exclusively under the Administration and management of the erstwhile Maharaja, In the year 1950, Agreement vide Annexure "F" between the erstwhile Maharaja of Mysore and the Government of India and the connected Inventory of Private Properties, the temples referred to above were declared as private properties vested in the Maharaja of Mysore Annexure "G" under G.O. No. 16303-16408 C.B. 69-50-4 dated 6-2-1951, the then Government of Mysore recognised the Palace Muzrai Institutions as the private properties of the Maharaja of Mysore. It is further stated that the recognising the vested private rights of the Maharaja in these temples, meant that the Temple properties were vested in the idols, and, that the erstwhile Maharaja was the "shebait" of the above said Temples. The Temples which were exclusively worshipped by the erstwhile Maharaja and his Royal family, where public were allowed for Darshan and Pooja with the permission of the Maharaja on special days as per Annexure "H" and "H1." It is further stated that the temples referred to above, were built by the Maharajas themselves. They had dedicated their movable and immovable properties under endowments etc., at various points of time during the long span of over 500 years, from 1399. These dedications were mainly oral, but were absolute and the properties were inalienably conferred on the deity to sustain worship of the deities in perpetuity, it is stated that the dedications were of the completes character, the dedications by Maharaja were all made in completes terms, divesting themselves of their rights in favour of the deity, with the object of making private temple. The building of the temples, renovations, consecration of the idols, arrangements of regular worship and services, provisions for various Religious festivities, rituals, processions, rathas etc., were all done by them at their own expense. It is further stated that each endowment was in the name of a particular deity and the beneficiaries were primarily the Maharajas and the Royal Family of the petitioner family. All the religious and other activities of these temples were exclusively under the control, management, administration and direction of the Maharajas themselves. According to Hindu law this was confined to the Line of

Succession in the Royal family. It is the further case of the petitioner that a Committee was constituted by the Maharaja consisting of Dharmadhikaries supervised the day to day Sevas, Poojas, Special Sevas etc., according to Agama Sastra vide Annexure "J." Public were not allowed as a matter of course. Admission to the Palace Temples inside the Fortress was with the permission of the Palace authorities under the Control of the Maharajas. No member of the public was associated either with the management or administration of the temples and they were not interfering, challenging or questioning the matters concerning the temples. Maharajas had made their own renovations, additional constructions at the time of offering of Khalasa. The public had not been invited to make any contribution. The Maharajas had made their own resources available on such occasions. The debutter property became vested in the idol and the idol itself became the juristic person. All Utsavas (processions) of the deities round the year have been performed by the petitioner family and Royal family. Therefore, the said places are so basic and essential that without these places functions could not be performed. The Maharajas, as shebaites have made elaborate and orderly arrangements for day to day worship, pujas, rites in the various temples, and were exercising administration and managerial powers, in maintaining the temples. That has been done for generations. Each successor Maharaja has dedicated something of his own movable or immovable property to the debutter property. Therefore, the Temples has become hereditary in the Royal family since several hundred years. The petitioner was aggrieved by the impugned order filed a writ petition urging the following legal contentions.

3. Government orders at Annexure "C" dated 27-10-1908, Annexure "D" dated 20-1-1909 and Annexure "E" dated 14-4-1920 came under "existing law" within the meaning of Article 372(1) of the Constitution of India. The administrative control of the institutions was transferred to Muzrai Department, the Palace Controller being placed in immediate charge and management of the institutions, From 1908 onwards erstwhile Maharaja have exercised exclusive administrative and managerial powers with regard to the said Temples. The said Temples were included in the 1950 agreement with the erstwhile Maharaja's Family by the Union of India, and the rationale for such inclusion is that these temples according to Hindu law (dedicated by the erstwhile Maharajas) had become the property of the Idol or deity i.e., "Debutter property." Therefore, it is contended that the erstwhile Maharajas were the "shebaites" since generations. The further contention is that shebait status vested by the erstwhile Maharaja of Mysore continued after 26-1-1950 thereby giving the same status to the Maharajas. It is contended that 26th Amendment to the Constitution, the Government of India issued a Memo duly signed by the Joint Secretary to Government of India stating that the properties which were recognised as private properties of the Rulers in accordance with the settlement with them will continue to remain with them vide its order dated 26-10-1972. The legal contention urged on behalf of the petitioner is taking over the temples vide impugned order at Annexure "A" is bad

even according to Section 7 of the Act, 1927 in lieu of Dharmadarsis and Nazarine appointed u/ Section 6 of the Act. Appointment of Committee to Muzrai Institutions does not empower to provide for authority of the State Govt. to take over Palace Muzrai Temples, under an executive order vide Annexure "A" dated 28-9-1974 by virtue of Government orders 1908, 1909 and 1920 vide Annexures "C," "D," and "E,"D," (sic). Temples have been specifically removed from the purview of the Act, 1927. Therefore, it is contended that the Government has no power to take these temples, which are no longer Muzrai Institutions, as they were under three Government orders. In law, the temples were kept beyond the Government's power, but by virtue of Government order dated 28-9-1974 constituted a Committee for the management of temples belonging to the Palace. It is further contended that the two Government orders dated 20-1-1909 and 14-4-1920 of the Government of his Highness, the Maharaja of Mysore, the temples in question were directed to be removed from the purview of the Muzrai Department and were placed under the control of the Palace Department. Therefore, there is no Muzrai Institutions. Section 7 of the Act provides for appointment of Committee to Muzrai Institutions and does not empower or provide for authority to take over Palace Muzrai Temples, under an executive order i.e., by passing the impugned order dated 28-9-1974 at Annexure "A" and further under the provisions of the Act of 1927 there is no document to indicate the previous orders were superseded and regarded as Muzrai Institutions. The status of the Temples continued in terms of the Government orders dated 27-9-1908, 20-1-1909 and 14-4-1920. Those orders constitute the existing law within the meaning of Article 372 of the Constitution. As a result, after 26-1-1950, the above said Government orders could not have been repealed or modified by the executive order of the respondent-Government.

4. In support of these contentions, reliance is placed upon the law declared by the Supreme Court in the case of Madhaorao Phalke Vs. The State of Madhya Bharat, . Therefore, the impugned order passed by the State Government under the provisions of Section 7 of 1927 Act is without jurisdiction and further urged that the power of the Government u/s 6 or 7 of the Act, 1927 could be invoked only if the temples were to be Muzrai Institutions under the provisions of the Act referred to above. In view of the Government orders of 1909 and 1920 the temples have ceased to be Muzrai Institutions under the provisions of the Act. Therefore, it is urged that the provision of the Act of 1927 has no application and Government could not have invoked its power under the provisions of the said Act and passed by the impugned order.

5. Further it is urged that the erstwhile Maharaja of Mysore, after the commencement of the Constitution of India in 1950, he continued as "Shebait" of the said Temples over the centuries, a long usage and custom in the Royal Family had crystallised inasmuch as the Office of the Shebait devolved on the Successor Maharaja on the demise on the incumbent Shebait Maharaja. The family custom has been upheld by the Supreme Court in the cases of (1) Angurbala Mullick Vs. Debabrata Mullick, (2) Kalipada Chakraborti and Another

Vs. Palani Bala Devi and Others, and further the learned Senior Counsel has placed reliance upon the Full Bench judgment of Calcutta High Court reported in AIR 1932 Calcutta 791 (Manohar Mukkerjee v. Bhubendranath). Wherein, the said High Court has held Shebait is a property, and further the same view has been taken in the case of AIR 1943 89 (Privy Council) . The Court held that Shebait is a property and it is a heritable property. Placing reliance upon the aforesaid judgment on the question of Shebait is a heritable property. The learned Senior Counsel would further contend that the petitioner's father and the petitioner were the members of the Hindu Undivided Family on the birth of the petitioner in the year 1953, the shebaitship devolved on his successor namely, the petitioner as his father late Maharaja was a "Shebait" in the year 1974. Therefore, by right, petitioner has become the "Shebait" of all the temples coming under the Palace Muzrai Institutions that has been fortified by Article IV of the 1950 Agreement. Further, the learned Senior Counsel has placed the reliance upon the judgment of the Apex Court in the case of Profulla Choron v. Satya Choron reported in : (1980)ILLJ211SC . In support of the proposition that like any other species of heritable property, where the founder does not dispose of the Shebait Rights, the Shebaitship devolves on the heirs of the founder according to Hindu law, if no usage or custom of a different nature is shown to exist and further contended that the founder either alter or revoke the appointment of Shebaitship, after it is made he becomes "fact us office to" as Founder -cum-Shebait, the essence of it is that the appointment of Shebait is an integral part of the Endowment itself. He further elaborates his submission contending that when the line of succession of Shebaits becomes extinct, there is no Escheat to Government but the managership reverts to the Founder who endowed the property or to his heirs. Further contended that Shebait Right is not alienable or transferable according to Hindu Law, as it is inseparable from his duties as a Ministrant of the deity, and manager of its temporalities and would be quite contrary to the express intention of the founder and also to the very policy of the Hindu Law relating to Shebaitship and therefore the transfer of the same is not countenanced by Courts. In support of this proposition he has placed reliance upon the following cases :-- (1) Raja Varma v. Ravi Vurmah ILR (1877) Mad 235 : (1877) 4 Ind App 76 (PC) ; (2) Avancheri v. Acholathil ILR (1882) Mad 89; (3) Jagannath v. Kishen Perishad (1867) 7 SWR 266; (4) Kali Charan v. B. Mohan (1871) 6 Beng LR 727 and (5) Dubo Misser v. Srinivas (1870) 5 Beng LR 617 and further contents that surrender of Shebait right is void according to Hindu law. In support of this contention he has placed reliance upon the following judgments :-- (1) Nagendranath v. Ravindra ILR Cal 132; (2) Raghunath Vithal Bhat Vs. Purnanand Saraswati Swami, ; (3) Profulla Choron's case : (1980)ILLJ211SC . The further ground of attack of the impugned order of the petitioner is that either transfer or surrender of the Shebaitship in favour of the Government is absolutely void as per the decision of the Supreme Court Judgment in Profulla Choron's case referred to supra and the other cases cited supra. The alleged surrender in favour of the Respondent-Government denied the petitioner's shebaitship is against the basic principles of Hindu Law and the same

is against the spirit of Endowments made by the founder Maharaja in regard to the line of Succession. Therefore, either transfer/surrender is void and illegal.

6. The learned Senior Counsel has also placed reliance upon Article 25 of the Constitutional Right to Religious Practices is guaranteed and protected under the Constitution of India. In support of the submission he has placed the reliance of the Supreme Court in the case of *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, and further placed reliance upon the judgments of Supreme Court in the cases of *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, and *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, . The fundamental right guaranteed in Article 25(1) neither can be waived, as they are estopped from doing so. The further contention of the petitioner is that the Government in exercise of its power under the provisions of the Act of 1927 cannot either remove or displace the hereditary management of the temples of the petitioner, it is further urged that power could not have been exercised by the State Govt. without giving an opportunity of hearing to the petitioner in compliance with the principles of natural justice. Therefore, it is contended that the impugned order is void, ab initio in law as the government order having civil consequences could not have been passed by it without complying with the rules of *Audi Alterem Partem* and further maintenance of the Temples by a committee is void and illegal. In support of the above said submission of the law laid down by the Supreme Court in the case of *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, is relied upon the Sr. Counsel therefore he has urged that taking over the management of 25 Temples by virtues of the impugned order by the Government is not only opposed to the law laid down by the Supreme Court in *Profulla Choron's* case : (1980)ILLJ211SC and the same is in violation of Article 300A of the Constitution of India, as the said Temples is a private property of the petitioner's family. Lastly, it is contended that non-handing over of the aforesaid temples to the petitioner will seriously affect his fundamental right to his office of shebait under Article 16(5) and depriving his right to religious freedom guaranteed under Articles 25 and 26 of the Constitution and to lead a religious life guaranteed under Article 21 of the Constitution. Therefore, he has prayed for quashing the impugned order.

7. The State Government opposing the prayers sought for in the writ petition has filed its statement of counter traversing various averments stating either a writ of certiorari or direction as prayed can (sic) be granted in favour of the petitioner. It is contended that writ petition is not maintainable both on facts and in law and further no relief can be granted in favour of the petitioner as he has not challenged the impugned order dated 28-9-1974 in the year 1998. Therefore, writ petition is liable to be dismissed in limine on the ground of delay and laches. The petition is filed after a lapse of 25 years from the date of passing the impugned order. It is stated that the Temples referred to in the writ petition situated in and around the palace as well as outside the palace which were

previously under the control of Management of the erstwhile Maharaja of Mysore, were taken over by the Government as these institutions were endowed with grants from the state funds from the beginning and the said temples were under the Muzrai department and maintained by the said department. The said Temples are of Muzrai Institutions in terms of the definition as defined u/s 2(2) of the Act, 1927.

8. It is stated in paragraph 6 of the counter that by the Government Order dated 3-12-1957 the Palace Muzrai Institutions were deleted from the list of private properties of his Highness the Maharaja of Mysore subject to the conditions specified thereunder. Similarly, by the Government Order which is impugned 25 Palace Muzrai Institutions have been taken over by the Government for its maintenance. Considering the importance and popularity of those Palace Muzrai Institutions which have been enjoying special protection and encouragement by the palace and keeping in view the public interest. All the 25 Institutions have been receiving Tasdiq as such Muzrai Institutions. The contention of the petitioner that all these institutions are the private properties of late erstwhile Highness the Maharaja of Mysore and the petitioner being legal heir is the absolute owner of the properties, has been denied as untenable in law for the reason that the said institutions were treated to be Public Institutions as they were never considered to be the Private temples. In the Muzrai temples (Public Institutions), the public are also allowed to worship the deities, public contributions are also received for the development of the Institutions. The public offerings in the form of contribution is also received for the development of the Institutions. Therefore, offerings of the endowment settlements is opened to one and all. Since the public are allowed to worship in the temple without any hindrance in the interest of general public. The Institutions were in the hands of the Government. Therefore, the petitioner cannot claim that he was a shebait or the said. Temples are not coming within the purview of the Act of 1927. Therefore, the question of claiming shebaitship by the petitioner administering the temple does not arise. As the said temples are not endowed by any person or a trust. Therefore, the claim of hereditary succession as shebait is wholly denied as untenable in law.

9. It is also further contended by the learned Advocate General that the prayer to quash the impugned Government Order dated 28-9-1974 cannot be granted as the petitioner does not have right upon the Muzrai Institutions as private owners of the "temples. The temples are coming under the purview of Act of 1927. The State Government is competent u/s 7 of the Act to appoint a Committee for day to day management and its administration which power is conferred upon the State Govt. for appointment of a committee for the proper management of Muzrat Institutions. It is further stated that in the impugned order, the representatives of the last ex-ruler of Mysore State, the petitioner herein is also one of the members of the Committee. The committee is headed by the Deputy Commissioner of the District. It is contended that the object behind passing the impugned order is after considering the importance of the popularity of the

institutions which have been enjoying the special protection and encouragement by the Palace of those Institutions. Therefore, a committee has been constituted u/s 7 of the Act. Further submitted that in the year 1891, the Administrative control of the Institutions was in Muzrai department. Subsequently, the control was placed under the Palace department by the order dated 20-1-1909 for administrative reasons. Whatever may be the nature of control either at the Muzrai Department or at the Palace department, the control was under the Government. Therefore, the contentions of the petitioner that the Institutions are Private Institutions of an individual or a family just because there was a change in administration and it cannot be contended that the Temples in question were brought under the control of the family of Maharaja as they have to be construed as Private Temples. The temples are not private, on the other hand, they are public temples for the reason stated supra. Therefore, the claim of the petitioner that they are the private temples are not tenable in law. 10. The devotees who will be performing special Sevas like Archanas, Abishekas are required to deposit the required amount for that purpose and the petitioner himself has deposited the required amount for sevas in the Temples like any other common man. Therefore, temples are brought under the Muzrai Department since from time immemorial. The change of department does not create a right in the petitioner to make claim over the temples as their private temples and private properties. It is justified that the impugned order is in conformity with the powers conferred u/s 7 of the Act. The Government has got powers to make rules under Sections 7 and 22 of the Act. Therefore, the powers of the Government cannot be questioned by the petitioner. For better , administration of the temples the Government may frame rules and form committee for the proper management such power is a statutory power for framing rules and constituting committee which cannot be questioned by the petitioner in this petition. Having regard to the nature of the prayer sought for is to quash the impugned order on the legal contentions urged by the petitioner amounts to granting declaratory relief of civil rights, which cannot be granted under Articles 226 and 227 of the Constitution of India. For this reason also, the writ petition cannot be entertained. Therefore, the respondents have prayed for dismissal of the petition.

11. It is the further case of the State Government that many of the temples which have been stated in this petition are declared as "Ancient Monuments" as per Section 3 of the Ancient Monuments Preservation Act (Mysore Act IX of 1925). The Government has declared that the temples in the Fort at Mysore and on the Chamundi Hills, Mysore Taluk to be protected monuments within the meaning of the said Act through Notification dated 5-1-1960. Such being the case, the claim of the petitioner for the ownership of the temples either as Shebait or otherwise is only unsustainable in law. Further stated that when the Temples were taken over vide impugned Notification, the revenue from the temples has been received to the tune of Rs. one lakh per year. Now, the income from all these temples have been raised to the level of one Crore Twenty Seven Lakhs per year. This amount is being utilised for the purpose of maintenance of

temples and for the payment of salary to the Archakas, for the purpose of maintenance of performance of Poojas periodical rathothsavas. And further stated that the revenue collection from the above said Muzarai Institution is nearly about 5 crores pf rupees, which has been kept under F.D. Account in various Nationalised banks by the Muzarai Department of the State Government, the interest that was earned out of the said amount is being incurred towards pay and day to day expenditure of the temples. Therefore, respondents have prayed for dismissal of the writ petition.

12. After hearing the learned Counsel for the parties, the following points that would arise for consideration and answer the same on the basis of the rival legal contentions urged by the learned Counsel for the parties :--

(a) Whether the writ petition is maintainable in view of the fact that same is barred by delay and laches?

(b) Whether the declaratory relief to declare the petitioner is a Shebait of the alleged palace muzrai temples mentioned in the petition as he has got an hereditary right to maintain and administer the same can be granted by this Court in this petition?

(c) Whether the petitioner is entitled for the relief for issuance of a writ of certiorari to quash Annexure "A" and further the petitioner is entitled for issuance of a writ of mandamus or direction to the respondents 4 and 5 to handover physical possession of all the palace temple and also the management records, jewellery etc., of the temple situated in and around and also at Chamundi Hills?

With reference to the facts and rival contentions urged on behalf of the parties, I answer Point no. 1 as hereunder ;

13. The first respondent in exercise of its power u/s 7 of the Act of 1927 has passed the impugned order constituting the committee of management, the said order was challenged before this Court by the petitioner along with another order dated 26-9-1997 in W.P. No. 3244/88. This Court disposed of the said writ petition vide its order dated 18-9-1997 with certain observations at paragraph 2 stating that two orders challenged in the said writ petitions are entirely different and have no inter se bearing therefore, in the opinion of the Division Bench, the impugned order challenged therein could not have been made the subject-matter of the same writ petition. In view of the prayer made by the petitioner therein, they restricted to the prayers made in relation to Annexure-A to the said writ petition with liberty to the petitioner to challenge the consequent Government Order which is the present impugned order by filing a separate writ petition or by pursuing such other remedy as may be available to him in law. Pursuant to the liberty given to the petitioner, the present writ petition is filed challenging the impugned order and sought for issuance of a writ of a certiorari and other prayers without assigning any satisfactory reasons or explanation for delay of 24 years. In filing this writ petition and further it is necessary to record a finding

that even in the earlier writ petition, no explanation was offered by the petitioner as to why he had filed the belated writ petition though the impugned order was passed in the year 1974.

14. The learned Sr. Counsel appearing on behalf of the petitioner has contended that, the impugned order passed by the first respondent is without jurisdiction as it has no jurisdiction or authority in law therefore, the impugned order is a void ab initio in law which can be challenged at any stage as there will be continuous cause of action for the petitioner to challenge the same, This contention cannot be accepted by this Court for the reason that the petitioner has not shown as to how the impugned order is non est in the eye of law except contending that the temples in question are not Muzarai Institutions as defined u/s 2(2) of the Act for the reason that the said Institutions have not received Tasdiq grant or perpetuity amount for their maintenance for Management of respective Institutions, this contention of the learned Sr. Counsel also cannot be accepted having regard to the undisputed fact namely that the temples have been under the administrative control of the Muzarai Department of erstwhile Mysore Govt. for some period and thereafter twelve temples were transferred from Muzarai department to Palace Department as the same were being under the control of the Palace Department vide order at Annexure-C dated 27-10-1908 by the erstwhile Government. Further, vide Annexure-D dated 20-1-1909, twelve more temples which were under the control of Palace Department have been placed under the control of Dy. Commissioner of Mysore District who has to manage the institutions like other Muzarai Institutions in his District. In the said order at paragraph 4, it has been specifically stated that, His highness Maharaja of Mysore was requested to issue needful instructions to the Treasury Department to enable the Deputy Commissioner of Mysore district to disburse at once the Tasdiq grant allotment from 1-10-1908 mentioned at paragraph 3 of the order from Mysore Treasury and necessary arrangements should be made in the Muzarai Department in that regard. Another order at Annexure-E dated 14-4-1920, the erstwhile His Highness Maharaja of Mysore directed the five institutions mentioned therein to be transferred from Muzarai Department to Palace Department for management on the same lines as the Government Order dated 27-10-1908 with a direction to the Controller to place at disposal of Palace Department.

15. From the aforesaid Government Orders, it is very clear that the said temples have been in the control of Muzarai department, some of them were transferred to Palace Department, some of them were transferred to the Deputy Commissioner of Mysore District and they have been receiving Tasdiq grants from the erstwhile Government of Mysore of His highness. After the Act of 1927 came into force, they continued to be the Muzarai Institutions in terms of Section 2(2) of the Act, 1927 and therefore the provisions of the Act were made applicable to be said temples. Therefore, submissions made by the Sr. Counsel on behalf of petitioner that the impugned orders passed by the first respondent in exercise of its power u/s 7 of the Act is honest in the eye of law is devoid of merit, hence the same cannot be accepted by this Court as the same is wholly

untenable in law.

16. For the reasons stated supra, the writ petition is liable to be rejected solely on the ground of delay and laches as the same has been filed after lapse of 24 years from the date of passing the impugned order by the first respondent.

Notwithstanding the abovesaid finding recorded on Point No. 1 against the petitioner, this Court proceeds to answer Point Nos. 2 and 3 also by giving its reasons as hereunder :

17. The petitioner has sought for declaratory relief to declare that he is a Shebait of Temples in question as he has got a hereditary right to maintain and administer the same placing reliance upon the judgments of Supreme court and Calcutta High Court which are extensively referred to at Paragraphs 5 and 6 of this Judgment. The submission of Sr. Counsel that the temples were under the control and management of Palace Department after the order at Annexure-C and subsequent to Annexure-C in respect of 12 temples at Annexure-C and five temples as per Annexure-E have been in the Management and Administrative control of Palace Department and in respect of 12 other temples mentioned at Annexure-D were in the control of the Deputy Commissioner of Mysore District which are the private temples as the Management and Administration was completely under the control of ancestors of petitioner's father and further erstwhile Maharaja of Mysore after commencement of Constitution in the year 1950 continued to be Shebait of said temples as the same was devolved on the successors of Maharaja. In support of the said contention, I have perused the Judgments referred to above upon which reliance placed by the learned Sr. Counsel are examined by this Court with reference to the Government Orders at Annexures C, D and E which orders would clearly go to show that they were under the control of Muzarai Department prior to the orders referred to supra and thereafter, some of the temples were transferred to Palace Department which were also controlled by erstwhile Government of Mysore, some temples were transferred to the Deputy Commissioner of Mysore District pursuant to the order at Annexure-D and the same have been under the management and administrative control of the Muzarai Department of the erstwhile Mysore Government.

18. The reliance is placed by the learned counsel upon the Judgment of Supreme Court in the case of Profulla Choron v. Satya Choron reported in : (1980)ILLJ211SC in support of the claim of the petitioner that the founder of Hindu Religious Institutions does not dispose of his Shebait Rights as the same devolved upon his heirs according to Hindu Law, if no usage or custom of a different nature is shown to exist. Further contended that, right of Shebaitship is not alienable or transferable according to Hindu Law and alleged surrender of Shebaitship right in respect of the temples to the State Government is void. In support of this contention, reliance is placed upon the decision of the Calcutta High Court and the Hon''ble Supreme Court are misplaced as the ratio laid down in those cases have no application to the facts of the present case as the

Government orders at Annexures C, D and E would clearly go to show that they have been under the Management and Administrative control of the Muzrai Department.

19. This Court has examined and considered the Government Orders at Annexures C, D and E which are issued by the erstwhile Maharaja of Mysore in respect of Temples in question to find out tenability of the submissions made on behalf of the petitioner. By careful reading the abovesaid orders, they would disclose that the said religious institutions have been under the control of Muzarai Department, some were transferred to the Palace Department and some were placed under the control of the Dy. Commissioner of Mysore District. Further, from the aforesaid undisputed documents produced by the petitioner, it is seen that in the year 1891, the said institutions" were under the complete administration and control of Muzarai Superintendent of the erstwhile Mysore Government. The same have been transferred from the said Muzarai Department to the Palace Department for their Management and Administrative control and vide Annexure-D Govt. Order dated 20-1-1909, the remaining twelve temples and institutions were placed under the control of the Deputy Commissioner of Mysore District for the Management like other Muzarai Institutions in the District. The remaining five temples on the lines laid down by the Government Order dated 27-10-1908 were transferred from Muzarai Department to the Palace Department for its Management vide Annexure-E. In respect of said temples, the Palace Department has granted the Tasdiq grants. Therefore, the contention of the learned Sr. Counsel for the petitioner that the abovesaid religious institutions were being the private properties and the Shebaitship right was there with the petitioner"s father and he has no right of surrender of the said right either in favour of Muzarai Department or the Palace Department or Deputy Commissioner of Mysore District and therefore the petitioner has got the right of Shebaitship cannot be accepted for the reason that the said contentions of the petitioner are not tenable in law in view of Government Orders at Annexures C, D and E. Therefore, the claim of the petitioner that the said Institutions were the private properties of the petitioners ancestors and he has got right to enjoy the right of Shebaitship in respect of said institutions are contrary to the Government Orders referred to supra, hence the submissions made in this regard cannot be accepted.

20. Further, in support of the claim of the petitioner, the reliance is placed upon the agreement of succession dated 23-1-1950 between His Excellency the Governor General of Government of India and His Highness Maharaja of Mysore which has been further clarified vide Annexure F, dated 6th February, 1951 stating that the rights, privileges, dignities including the dynastic succession and privy purse of His Highness Maharaja of Mysore has been determined by the agreement between him and the Government of India. The said accession agreement has included the religious institutions mentioned at Annexure-H and Part-C to Annexure-H and H1 as the said temple were already under the control of the Muzarai Department for sometime, Palace Department and the Deputy Commissioner of Mysore District for purpose of convenience and Administrative

control, based on that orders as in Paragraph 11 of the Govt. Order dated 3-12-1957 was issued.

21. The abovesaid fact is established from the other Government Order referred to above dated 3rd December, 1957 wherein the temples and other Muzarai Institutions have been treated as distinct from private properties of His Highness Maharaja of Mysore from State properties and the temples and other Muzarai Institutions under the Palace Dept., and the management of erstwhile Government of Mysore were included in the Private properties for the purpose of convenience and administrative control and further stated in the said Government Order at Paragraph 2 has clearly spelt out that the said Muzarai Institutions are different institutions like any other Muzarai Institutions under the Government Management and are accessible to every citizen, it was directed that the Palace Muzarai Institutions shown in the appended statement of accession agreement be treated as deleted vide Annexure-M from the list of private properties of His Highness Maharaja of Mysore and their control was taken over by the administrative department subject to the conditions mentioned in the said order. From the said document, it clearly establishes the fact that the said religious institutions were neither the private properties of the ancestors of the petitioner nor the petitioner. Therefore, the petitioner's claim for declaratory relief as prayed in this writ petition cannot be granted by this Court, as he has no right to the temples in question.

22. The further contention of the petitioner that the management and administrative control of the temples were being vested with the petitioner and he has been the owner of the temples is not tenable in law, in view of the averments made at statement of counter at paragraph-6 filed by the respondents wherein they have clearly stated that, vide Government order dated 3-12-1957, the Palace Muzarai Institutions were deleted from the list of private properties of His Highness of Maharaja of Mysore and their control was taken over by the Government subject to the conditions specified thereunder. Therefore, the contention that the petitioner's father and thereafter the petitioner acquired the right of Shebaitship upon the temples, the Muzarai Institutions at Annexure-A is wholly untenable in law as the said contention is devoid of merit and the same has to be rejected by this Court as wholly untenable in law.

23. For the reasons and the findings recorded by this Court on the point Nos. 2 and 3 formulated on the basis of Government Orders Annexures C, D and E and also Annexure-M. the Government order dated 3-12-1957, the temples were not private properties of erstwhile Maharaja of Mysore and the same were neither private properties nor Shebaitship was there either to the father of the petitioner and to him, hence the claims of the petitioner in this petition is wholly untenable in law.

24. The further contention of the petitioner that, his right of Shebaitship cannot either be surrendered or can be taken away by the executive order of the State Government by passing the impugned order in exercise of its executive power as

the petitioner has been enjoying the properties stated above and the management of religious institutions and he had acquired fundamental right guaranteed to him under Article 25 of the Constitution has been infringed is also not tenable in law for the reason that fundamental right was not there for him and the question of depriving the same by the State Government pursuant to the impugned order as urged by the petitioner does not arise at all for the reasons and the findings recorded at earlier paragraphs of this Judgment holding that the Muzarai Institution temples mentioned at Annexure-A have been under the control of Muzarai Department during 1891 and thereafter the orders passed by the erstwhile Mysore Government at Annexures C, D and E and the Government Order dated 3-12-1957 vide Annexure-M. In this view of the matter this Court has to record a finding that the petitioner is not entitled for the reliefs.

25. This Court has also further examined whether the impugned order at Annexure-A passed by the first respondent in exercise of its power u/s 7 of the Act of 1927 is without jurisdiction or authority of law or suffers from error in law. The above said contention is examined with reference to the pleadings of the parties keeping in view the Government Orders at Annexures C, D, E and M and also the reasons assigned in the impugned order, the State Government has exercised its power keeping in view the public interest at large and the Government has got the power u/s 7(2) of the Act to appoint a committee for day-to-day management and administration of the Temples which are Muzarai Institutions. From the impugned order, it is noticed that the petitioner is one of the committee members and the Committee is headed by the Deputy Commissioner of Mysore District. The order has been passed by the Government considering the importance and popularity of Muzarai Institutions. The said committee has been constituted having regard to the fact that said Institutions have been managed, administered and controlled by the erstwhile Mysore Government from 1891 and for administrative reasons, some of the temples were transferred to Muzarai Dept., Palace Dept. of erstwhile Mysore Government and some of the temples were under the control of the Deputy Commissioner of Mysore District. Therefore, the contention urged on behalf of the petitioner that they are private institutions belonging to the petitioner's family is wholly untenable in law and further the first respondent-State Government has rightly exercised its power u/s 7 of the Act in constituting the Committee of Management to have the proper management and administrative control of the Muzarai Institutions of which the claim is made by the petitioner.

26. For the reasons stated supra, the contention urged on behalf of the petitioner that, without framing the rules in exercise of power u/s 7 of the Act of 1927, first respondent should not have exercised its power is also without any substance and the same is devoid of merit. By reading Section 7 of the Act referred to supra, it is clear that the said provision confers power upon the State Government to appoint Managing Committee for the effective management and administration of Muzarai Institutions and its properties in the Interest of public at large.

27. In this view of the matter, I am of the considered view that the impugned order at Annexure-A has been rightly passed by the first respondent in exercise of its power u/s 7 of the Act appointing responsible persons who are interested in the welfare of the institutions and the said committee has been appointed subject to the rules that Government may frame in that regard to therefore, the same cannot be found fault with by the petitioner as he has no right to question the impugned order. Further in view of the Notification dt. 5-1-1960 u/s 3 of Ancient Monuments Preservation Act (Mysore Act IX of 1925) the claims of the ownership rights and Shebaitship of the temples in question are wholly untenable in law.

28. For the reasons recorded by this Court in the earlier paragraphs particularly in view of Government Orders referred to supra stating that the said Institutions are Muzarai Institutions, I do not find any error in law either for want of jurisdiction or authority in passing the order by the State Government in exercise of its power u/s 7 of the Act as contended by the Sr. Counsel on behalf of the petitioner.

29. For the reasons stated supra, the petitioner has not made out a case for grant of the reliefs as prayed for in this writ petition much less, no writ of certiorari as sought for by the petitioner can be issued having regard to the findings recorded by this Court on Issue Nos. 2 and 3 against the petitioner. The further declaratory relief of Shebaitship of petitioner and direct respondents 4 and 5 to put the petitioner in possession of temples in question also cannot be granted for the reason that this Court has recorded a categorical finding on the basis of the Govt. Order produced by the petitioner which would show the temples are all Muzarai Institutions and they do not belong to the petitioner's family and the same have been under the control and management of the State Government. Therefore, the question of putting the petitioner in possession of the said temples by issuing a writ of mandamus does not arise at all.

30. Accordingly, the writ petition is dismissed.