Hari Bhanu Maharaj Of Baroda vs Charity Commissioner, Ahmedabad on 28 August, 1986

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Bench: Ranganath Misra, S. Natarajan

JUDGMENT

S. Natarajan, J.

1. This appeal by certificate is directed against a judgment of the High Court of Gujarat reversing the judgment of the Assistant Judge, Baroda and restoring the finding of the Charity Commissioner that a property known as Laxman Maharaj Math is a public trust and not the private property of the appellant herein. The property is also alternatively referred to as Ramji Mandir. It consists of two items viz. the main property known as Laxman Maharaj Math and its adjunct known as Nagarkhana on the other side of the road. As the Charity Commissioner has held that both the items form part and parcel of the Math and constitute a single unit we will refer to both the items under the common name of Laxman Maharaj Math.

2. One Haribhat Maharaj is the propositus of the appellant, and his brothers. As per the genealogy table furnished by the appellant, he and his brothers are the descendents of Haribhat Maharaj in the fifth generation.

Haribhat Maharaj (founder of the Math) | Ramakrishna | Purshottam | Bhanu Maharaj _____ | | | Hari Bhanu Maharaj Sitaram Bhanu Shriram (Appellant) Maharaj Bhanu (Power of Attorney Maharaj Agent) 1

3. In the year 1835 A.D. (S.Y. 1891) Haribhat Maharaj built a Samadhi for his maternal uncle Laxman Maharaj, who was a brahmchari and an ascetic. In front of the Samadhi he also built a Mandir with the idols of Ram, Laxman and Janki installed on a Sinhasan. Thenceforth the property came to be known as Laxman Maharaj Math. On the death of Haribhat Maharaj, his descendents built a Samadhi for him also adjoin the Mandir.

4. When the Bombay Public Trusts Act, 1950 (hereinafter referred to as the 'Act') was enacted the

appellant Filed an application under Section 18, though the Math was a private institution, by way of abundant caution, to secure a declaration in that behalf in order to avoid any complications at a later period. Though no member of the public appeared at the inquiry to claim that the Math is a public trust, the Assistant Charity Commissioner rendered a finding that the Math is a public trust within the meaning of the Act. The finding was confirmed by the Charity Commissioner in the appeal preferred to him. Thereupon a reference was made under Section 72 of the Act and the Assistant Judge, Baroda set aside the finding and held that the Math is the private property of the appellant. On further appeal, the High Court has reversed the judgment of the Assistant Judge and restored the finding of the Charity Commissioner. This appeal has been filed against that judgment to challenge its correctness.

5. Mr. K.L. Hathi, learned Counsel for the appellant advanced various arguments to contend that the High Court has failed to view the appellant's case in its entire conspectus and it has also failed to notice relevant features of distinctive nature which clearly establish the private character of the Math. Controverting these arguments Mr. Mehta, learned Counsel for the respondent placed reliance upon the physical features of the Mandir and also upon the contents of Exhibits 38 to 41 and argued that these materials afforded adequate grounds for the High Court to hold that the Math is a public trust.

6. On an examination of the materials on record we find the arguments of Mr. Hathi to have merit and force, in them. We find that the High Court has failed to take notice of pertinent features in the case and draw the necessary inferences therefrom. We shall therefore advert to those features and point out the failings in the judgment of the High Court.

7. The Charity Commissioner, who dealt with the appeal against the order of the Assistant Charity Commissioner realised that the burden of proving that the Math is a public trust was upon the department He, therefore, set out the legal position correctly as under :-

> It is therefore, for those who assert otherwise to prove that it is not a private property but the property of a public trust and that a public trust exists. The burden, is, in this case on the Organisation to establish these facts satisfactorily.

8. After enunciating the onus of proof, in such terms, the Charity Commissioner re-apprised the evidence and summarised the position as follows :

> ...No members of the public have been examined to show that they went for Darshan or for precept or for hearing religious instructions or that they went for worship or Darshan as of right. A public notice was given. No one, however, comes forward to assert the claim over this property that it is a public trust. No member of the public either appears or files a written statement or comes forward to give evidence, nor has any member of the public been examined, nor is it asserted by anyone that the members of the public do the Darshan as of right. On the other hand, the appellant's brother at Exhibit 37 has deposed the people come for Darshan with his permission. The statement has remained uncontroverted and unchallenged....It is also true that

there is no evidence of dedication as such; nor is it in evidence that the outsider had contributed or spent for the construction of the temple or any part thereof or of any property in dispute. It is also true that the property in dispute has stood in the name of the appellant, and not of the temple, in the Municipal and Government records, that the Municipal receipts, are in the name of the appellant, that the tenants of the property have paid rent to the appellant who has himself in his own name passed recipts, that the appellant and his brother have mortgaged the properties, that they have reconstructed the properties, sold their own ornaments, pledged their own properties and raised moneys for the reconstruction of the properties and between 1944 to 1950 they have they say spent nearly Rs. 50,000/- for the reconstruction of the property which according to them cannot be disputed. The appellant has produced a heap of evidence of more or less undisputable character, to prove this fact. Thus there is evidence of conduct and there is evidence from the Municipal and Government Records also to support the appellant's contention that it is his property and that it has been treated as such.

9. After having gone so far, the Charity Commissioner had made a volte-face and thrown overboard the entire evidence adduced by the appellant and has observed that the appellant had failed to substantiate his case by production of appropriate sale deeds, Sanads etc. The Charity Commissioner had thus wrongly cast the burden of proof on the appellant and furthermore he had gone back on his conclusion that the appellant had produced a heap of evidence of more or less indisputable character to prove that the Math is his private property. The High Court has committed a grave error in failing to notice the serious flaw contained in the order of the Charity Commissioner.

10. We will now examine the evidence relating to the origin of the Math and how it was being managed by the members of the appellant's family during a period of five generations. As per Exhibit 38 (Satara Kalmi Yadi...17 Calumniated questionnaire), to which we shall make a detailed reference later the Math was constructed in the year 1835 A.D. (S.Y. 1891) by Haribhat Maharaj. The Math then consisted of a Samadhi for Laxman Mahraj and a Mandir in front of the Samadhi. Another Samadhi came to be built after the death of Haribhat Maharaj himself. In the absence of evidence to show that the two persons whose bodies have been entombed under the Samadhis were renowned Sanyasis or religious heads or that they had a following of disciples, it has to be necessarily taken that the Samadhis and the Mandir had been built by the members of the family for showing their reverence to their ancestors and for their worship in the Mandir built near the Samadhis. As per the evidence of Sitaram Bhanu Maharaj (Exhibit 37) and the appellant (Exhibit 110) the land was acquired by their ancestors and the Samadhi for Laxman Maharaj and the Mandir were constructed by Haribhat Maharaj. They have further stated that the old construction became dilapidated in the year 1927 and thereafter Bhanu Purshottam reconstructed the Mandir and also put up a Sabha Mandap in front of it. The other portions of the building were constructed by the appellant between the years 1944 to 1950 with monies borrowed from some persons who have been examined as witnesses during the enquiry. The evidence of the appellant and his brother Sitaram Bhanu stands unchallenged and furthermore there is no evidence to the contrary to show that the Samadhis and the Mandir were built by the public or from out of public funds. Once materials are found to warrant a conclusion that a Math or Mandir was private in character at the time of its

origin, then unless there is clear and definite evidence to show that there had later been a dedication of the institution for the use of the public, the private character of institution will not get effaced. Even if at some subsequent point of time, the owners of the Math had permitted the members of the public to visit the Math and worship at the Mandir; it will only mean that the members of the public would have visited the Mandir as invitees and nothing more. this Court has laid down in Goswamy Shri Mahalaxmi Vahujai v Ranchhoddas Kalidas and Ors. . as follows :

> 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.
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> This well-settled position of law has not been borne in mind by the High Court when it dealt with the appeal.

11. Another infirmity noticed in the judgment of the High Court is that it has not focussed its attention to the juxtaposition of the Math with the residential portion of the propety occupied by the appellant and his brothers and the members of their families. The Charity Commissioner has observed that the residential portions of the appellant's family are situated on the western and eastern portions and besides there are also shops on the western and southern sides. The High Court has adverted 10 these features and observed that "the Manager with his family resided in a part of premises adjoining the room wherein idols are installed". Whenever a dispute arises as to whether a Mandir is public or private temple, one of the features taken into consideration by Courts for deciding the issue is the location of the Mandir with reference to the residence of the persons claiming rights of private ownership. This position has been set out in several cases but we may refer only to two of them viz. Peesapati v. Kanduri (1915) MWN 842, 18 MLT 543. Devki Nandan v. Murlfdhar AIR 1957 133. The decisions lay down that one of the crucial tests for determining whether a temple is intended for private worship or public worship is to find out whether the temple has been constructed within the precincts of residential quarters or in a separate building. In this case the Mandir is within the precincts of the residential quarters of the appellant but the High Court has failed to give due consideration to this aspect of the matter.

12, Another relevant feature which must enter the field of perception when judging whether a Math or Mandir is a public or private one is the size of the construction and its proportion to the entire extent of 1 the property. In this case the evidence is that the total extent of the property is 150'x 170'whereas the extent of space occupied by a Samadhi and the Mandir is only 16'x 12'. It is therefore, obvious that the Math occupies only a small area in the total extent of the property. Admittedly, the other extent of the property is being enjoyed and has always been enjoyed by the appellant and his ancestors for their private use and occupation. This would not be the case if the Math or Mandir was a public institution. Instead of drawing the proper inference from the smallness of area of the Math, the High Court has been influenced by the fact that a Sabha Mandap measuring 42' x 28* and having 37 pillars and having a partitioned portion of 10' x 7' paved with marble at the entrance of the mandir, is in existence, and it is strongly suggestive of the public character of the institution. It has also attached importance to the provision of two collection boxes, one for grains

and one for cash in the Sabha Mandap and to the provision of a collection box near each of the two Samadhis. The High Court has failed to realize that the Sabha Mandap did not form part of the original construction made in the year 1835 A.D. The Sabha Mandap had been built by Bhanu Maharaj about 100 years later i.e. in year 1927. It goes without saying that on the basis of a construction made nearly 100 years later, no inference can be drawn regarding the character of the Math at the time of its origin. The necessity for constructing a large Sabha Mandap may have arisen in 1927 due to the increase in the number of the members of the family and also for convenient by giving Dharmopdesh and religious lectures to invitees as the appellant and his ancestors were earning their livelihood by such religious activities. It is also in evidence that the members of the family were teaching Sanskrit to students. In such circumstances, the High Court was wrong in holding that notwithstanding the small size of the Math, the presence of the Sabha Mandap conflicts with the claim that the Math is of private character.

13. Even the provision of the collection boxes for cash and grains cannot by itself be a decisive factor to conclude that the Math is a public Math. The collection boxes had been installed in the Sabha Mandap as well as near the Samadhis. Since there is no evidence that Laxman Maharaj and Haribhat Maharaj for whom the Samadhis have been built were religious leaders revered by the public, the provision of the collection boxes near their Samadhis would have been only for deposit of offerings by the members of the families on Guru Purnima day or in fulfilment of vows taken by them. More than this, the contents of the cash boxes themselves disprove the assumption that they have been kept there to enable the members of the public to make offerings in cash or grains during their visit to the Mandir. Of the two boxes kept in the Sabha Mandap one was found to contain 1/4 pound of wheat and the other Rs. 0-8-9. Similarly the boxes kept near the Samadhis were found to contain 1/4 pound of rice and one paise respectively. If the members of the public had been visiting the Mandir even occasionally and depositing contributions of grains and cash in the collection boxes, the quantum of grains and the amount of cash would not have been so meagre and trivial as 1/4 pound of wheat and, Rs. 0-8-9. These revealing features have been lost sight of by the High Court and has led to fallacious conclusion.

14. Lastly we come to Exhibits 38 to 41, the contents of which, in the opinion of the High Court unmistakably destroyed the case of the appellant. Considerable arguments were advanced before us by the learned Counsel appearing for the parties with reference to the contents of these documents. We shall, therefore, consider these documents at some length. Exhibit 38 is a 17 Calumniated form which had been sent by the then administrator of the Mandir to the Secretariat of the erstwhile Baroda State Administration. It is stated therein, under Column 7 that Shri Ram Navmi festival was being celebrated in the month of Chaitra, that local people come for Darshan, that they put before Shreeji cash and such offerings approximately total upto Rs. Twenty Five. Against column 8 it is stated that the Devasthan was receiving from Government for worshipping, offering etc. Shreeji by way of annuity Rs. 475 p.a. and for death anniversary and Ram Navmi festival celebration Rs. One thousand five hundred. It is then stated under column 9 that the Government patronage was first started in the year 1904 by Shrimant Sarkar Ganpatrao Maharaj. It is also stated that subsequently Shrimant Sarkar Khanderao Maharaj raised the grant to Rs 3,000 and still later Shrimant Sarkar Malharao Maharaj raised the grant to Rs. 4,00° and eventually, the grant was reduced to Rs. 1975 Under column 11 it is stated that a patronage of approximately Rs 200 was being received for

beating of drums and Rs. 300 towards Babashai. Under column 12 it is also stated that approximately about 3000 tiles valued at Rs. 7-8-0 was being received from the Government Lastly it is stated that the annual expenditure for worship as well as performance of anniversary and celebration of Ram Navmi festival is approximately Rs. 3,500 yearly and it is accounted every year and the account book was being signed by the Superintendent. What falls for consideration is whether these entries in Exhibit 38 indisputably establish the public character of the Math and belies the appellant's: case that the Math is a private institution. It appears to us that if all the information provided in Exhibit 38 is taken into consideration the particulars given against the columns noted above can never lead to the conclusion that the Math was a public one either at the time of its origin or at some subsequent point of time. In Exhibit 38 it is clearly stated that the Devasthan was built by Haribhat Maharaj and the name of Shri Ramji was independently originated. It is nowhere stated in Exhibit 38 that the land was given by the rulers of Baroda or that the land was purchased and the temple was constructed from out of public contributions or that the Mandir had been constructed for the benefit of the public. It is significant to note that under column 7 it has been stated that the local people come for Darshan only during the time of Shri Ram Navmi festival and the total cash offerings given by them would not exceed Rs. 25/-. If the Mandir was a public one the devotees would have been visiting the temple all through the year and not only during the festival of Ram Navmi. Therefore, the contention of the appellant that the members of the public come to the Mandir only on invitation can be legitimately accepted.

15 In so far as the grants by the rulers of Baroda are concerned, they have been made only from the year 1904 whereas the Mandir had come into existence even in the year 1835. We also find that the cash grants have varied from ruler to ruler. The grants were made not only for the performance of puja and celebration of Ram Navmi festival but also for performance of the anniversary functions at the Samadhis. If all these factors are conjointly taken into consideration, it will only mean that the payments should have been made by the rulers on account of their personal reverence to the Samadhis and the Mandir and not in recognition of the public character of the temple. The obtainment of 1 the signature of the Superintendent in the account books every year should have been followed only to prove to the rulers that the grants made by them had been properly utilised.

16 Exhibits 39 and 40 are in the extracts from the Survey Register relating to the two items of properties owned by the Math. The High Court has taken the view that because under Column 12 the ownership of the land is described as "Of Ramji Mandir Administrator is Ramkrishna Hariram Ramdasi of Laxman Maharaj", the property must be held to be a public trust. What the High Court has failed to notice is Column 9 which pertains to the "Name of Owner". It is noted as follows :

> Administrator of Ramji Mandir Ramkrishan Hariram Ramdasi of Laxman Maharaj.
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> It is only Column 9 that is relevant for consideration and not Column 12 which contains the order of the surveying authority. The name of the owner is not therefore Ramji Mandir as concluded by the High Court but only Ramkrishna Hariram Ramdasi who was then the administrator of Ramji Mandir. Even conceding that the property had been registered in the name of Ramji Mandir it will not automatically mean that the property constituted public trust. It can well be said that the members

> of the family, being true devotees and earning their livelihood by giving Dharmopdesh and religious lectures would have considered it as a reverential act to describe their property as that of the Lord himself.

17 Some importance has been given by the High Court to the observation of the Surveyor in Exhibits 36 and 40 that the Mandir seemed to be a public temple. In our view these observations ought not. to carry any weight because the Surveyor of land is not a competent authority to determine whether a temple is a public or private one and secondly he has only given expression to his surmise and that too in a very guarded manner. We do not, therefore, find any adverse material in Exhibits 39 and 40 to dispel the case of the appellant.

18 Coming last to Exhibit 41 we again notice that the High Court has considered the document only in a perfunctory manner and not minutely The High Court has noticed only Column 8 of Exhibit 41, where the owner's name is described as "Ramji Mandir's ownership administrator Laxman Maharaj Ramkrishna Hariramdas". If the Mandir was the owner there was no need to refer to the name of the administrator. Be that as it may, the particulars given under Column 9 provide conclusive material to show that the property was of private ownership and it was not a public trust. Column 9 pertains to "Nature and origin of title". The entry under this column is "Ownership by sucession". If the Mandir was the owner of the property it is inconceivable that the ownership would pass on by succession from one generation to another. This clinching material has completely escaped the notice of the High Court.

19. Thus we find that Exhibits 38 to 41 are not destructive of the appellant's case in any manner and much less do they afford materials to hold that the Math is a public trust.

20. One another document which has a great bearing on the case is Exhibit 43. It is a Sanad issued in April 1912, In the remarks column it has been stated as follows:

> The land stated above is declared to be private property-Its possession is to be continued to heirs and with a right to transfer for consideration is confirmed on your name and this Sanad as per the order of Shrimant Sarkar Maharaj Saheb is issued....
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> (Emphasis supplied) This document sets at rest any doubt about the private character of the Math.

21. We therefore, find preponderant circumstances and overwhelming material to accept the case of the appellant, that Laxman Maharaj Math, also called Ramji Mandir is the private property of. his family and it is not a public trust. The High Court, in our opinion, was in error allowing the appeal preferred by the Charity Commissioner and reversing the judgment of the Assistant Judge. We, therefore, allow this appeal and restore the judgment of the Assistant Judge, Baroda. Taking into consideration the circumstances of the case we direct the parties to bear their respective costs.