

# **Nar Hari Sastri And Others vs Shri Badrinath Temple Committee on 9 May, 1952**

**Equivalent citations: 1952 AIR 245, 1952 SCR 849, AIR 1952 SUPREME  
COURT 245**

**Author: B.K. Mukherjea**

**Bench: B.K. Mukherjea, Saiyid Fazal Ali**

PETITIONER:  
NAR HARI SASTRI AND OTHERS

Vs.

RESPONDENT:  
SHRI BADRINATH TEMPLE COMMITTEE.

DATE OF JUDGMENT:  
09/05/1952

BENCH:  
MUKHERJEA, B.K.  
BENCH:  
MUKHERJEA, B.K.  
FAZAL ALI, SAIYID  
DAS, SUDHI RANJAN

CITATION:  
1952 AIR 245                      1952 SCR 849  
CITATOR INFO :  
R                      1971 SC2540 (16)  
RF                      1987 SC2064 (7)

ACT:

Hindu law--Religious Endowments--Right to worship--Right  
of Pandas to accompany worshippers to temple--Bye-law of  
temple committee to prohibit taking of gifts within temple  
precincts --Validity--Badrinath Temple Act, 1939, ss. 3, 4.

HEADNOTE:

The right of the Deoprayagi Pandas to enter the Badri-  
nath Temple along with their Yajmans is not a precarious or  
permissive right depending for its existence on the arbi-  
trary discretion of the temple authorities; it is a legal  
right in the true sense of the expression, but it can be

exercised only subject to the restrictions which the temple committee may impose in good faith for maintenance of order and decorum within the temple and for ensuring proper performance of customary worship.

There is nothing in the Badrinath Temple Act, 1939, which vests in the temple committee or the idol, gifts made to Pandas within the precincts of the temple. But bye-law (8) of the Puja Bye-laws framed by the temple committee which forbids the acceptance of gifts by any person within the precincts of the temple unless he comes within the category of persons specifically authorised by the committee to receive the same is a valid bye-law, which it was quite competent for the committee to enact under the terms of clauses (m) and (n) of sec. 25 of the Act and in view of this bye-law the Pandas are not entitled to a declaration by the Court that they have a right to take, within the precincts of the temple, whatever they receive as gifts at the time of worship.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 105 of 1951.

On appeal from the judgment and decree dated the 22nd November, 1946, of the High Court of Judicature at Allahabad (Verma c.J. and Mathur J.) in First Appeal No. 310 of 1941 arising out of judgment and decree dated the 4th March, 1941, of the Court of the Senior Civil Judge of Pauri, Garhwal, in Original Suit No. 1 of 1934.

K.S. Krishnaswamy Iyengar (R. C. Ghatak and N.C. Sen, with him) for the appellants.

S.K. Dar (D. D. Unival, with him) for the respondent.

1952 May 9. The Judgment of the Court was delivered by MUKHERJEA J.--The sanctity which orthodox Hindu thought and feeling attribute to visiting of sacred places is nowhere better illustrated than in the vast concourse of pilgrims, who are attracted every year, from all parts of India, to the mountain shrines at Badrinath, situated, high up in the Himalayas, in the District of Garhwal. The place to which the appellation of 'Puri' is given, contains a number of temples but the principal temple is the one where the idol Badrinath along with some other subsidiary idols is installed. This main temple is divided into three portions or apartments, and to the innermost portion which is considered to be the holiest and where the deities are located, no pilgrim is allowed access. The pilgrims gather in the middle room; they have 'darshan' or look at the deity from this place and there also they make their offerings and perform other rites of individual worship. The last room is an outer apartment which is used as a sort of waiting place for the worshippers. Outside the temple and at a short distance from it, there is a hot spring known as Tapta Kundu where the worshippers take ceremonial bath before they enter into the temple and to the Tapta Kundu they come back again after the ceremonies are over.

The temple at Badrinath is an ancient institution and is admittedly a public place of worship for the Hindus. The chief priest or ministrant of the temple is known by the name of 'Rawal' who originally looked after both the spiritual and temporal affairs of the idol subject to certain rights of supervision and control exercisable by the Tehri Durbar which, however, were not very clearly defined. It appears that there was a scheme for the management of the temple framed by the Commissioner of Kumaun Division, within whose jurisdiction Badrinath is situated, some time in the year 1899. Under this scheme, the 'Rawal' was to be the sole trustee of the Badrinath temple and its properties, and the entire management was entrusted to him subject to his keeping accounts, which he had to submit for approval by the Tehri Durbar, and making arrangements for the disposal and safe custody of cash receipts and other non-perishable valuables. This scheme apparently did not work well and led to constant friction between the 'Rawal' on the one hand and the Tehri Durbar on the other. This unsatisfactory state of affairs led to public agitation and demand for reforms, and in 1939, the U.P. Legislature passed the Sri Badrinath Temple Act, the object of which was to remove the chief defects in the existing system of management. The Act restricts the 'Rawal' to his priestly duties and the secular management is placed in the hands of a small committee, the members of which are partly elected and partly nominated, powers being reserved to the Government to take steps against the committee itself, if it is found guilty of mismanagement. The Act preserves the traditional control of the Tehri Durbar. The appellants before us, who were the plaintiffs in the trial Court, claim to be Pandas associated with the Badrinath temple. The Pandas are Brahmans belonging to the priestly class and are found to exist in almost all important public places of worship in India. They are not temple priests in the proper sense of the expression and have nothing to do with the regular worship of the idol which is carried on by the Shebayat, the High Priest or the manager as the case may be. Their chief duty consists in acting as guides or escorts of the pilgrims, and taking them to various places of worship acquainting them at the same time with detailed information regarding the reputed sanctity of each. They look after the comforts of the pilgrims and make arrangements for their boarding and lodging and also act as Tirtha Purohits, in which capacity they assist the pilgrims in the performance of various acts of individual worship as distinguished from the general worship which is conducted by or on behalf of the temple authorities.

It is admitted that there are several classes of Pandas in Badrinath and the Deoprayagi Pandas to which category the plaintiffs belong get normally the charge of all the pilgrims that come from the plains, whereas the Pandas of the 'Dimri' class act as attendants on all hill people. The people coming to Badrinath from the plains generally follow the pilgrim's route from Hardwar to Badrinath and in this route, at a distance of about 58 miles from Hardwar, stands the place known as Deoprayag where all the Deoprayagi Pandas reside.

It is in the light of these few introductory facts that we propose to follow the history of this litigation and deal with the points in controversy that it has given rise to. The suit was commenced by the appellants in the Court of the Senior Civil Judge of Garhwal on 16th April, 1934, and the only defendant in the suit, as it was filed originally, was the 'Rawal' who was at that time in entire charge of the Badrinath institution, both as Trustee and High Priest. The suit was a representative one and purported to be brought on behalf of all the Deoprayagi Pandas, and permission of the Court under Order I, rule 8, of the Civil Procedure Code was duly taken. The allegations in the plaint in substance are that the plaintiffs who are a body of Brahman Purohits residing at Deoprayag and also at

Badrinath have the right, by immemorial custom, to act as Pandas and 'Tirtha Purohits' of the pilgrims at Badrinath. It is said that in performance of their duties they meet the pilgrims at Hardwar and conduct them throughout the pilgrimage to different places of sanctity and finally to Badrinath itself. Besides looking to their creature comforts, they assist the pilgrims, while they stay at Badrinath, in having their ceremonial ablutions in the 'Tapta Kundu' and then conduct them into the precincts of the temple and assist them in having 'darshan' of the idols and making offerings to them. The plaintiffs aver that because of the support that they lent to the transfer of the management of the temple from the 'Rawal' to the Tehri Durbar, the defendant 'Rawal' was displeased with them and in August 1933, wrongfully and without any just cause or excuse, obstructed and threatened to obstruct the plaintiffs from entering the precincts of the temple along with their Yajmans or clients and unlawfully restrained them from assisting the pilgrims in the usual way at the time of 'darshan' and worship of the deities inside the temple. The reliefs prayed for in the plaint after it was amended stand as follows :--

(1) That a declaration be granted that the plaintiffs are the Pandas of Badrinath temple and that they have a right to personally go into the precincts of the Badrinath temple at all times and on all occasions without obstruction when the said temple is open for doing 'darshan', worship etc. (2) That the plaintiffs have the right freely to go into the precincts of the said temple with their Yajmans or clients whenever it is open for assisting them in the matter of 'darshan' or worship of God Badrinarayan and other deities and in the matter of making offerings to them. (3) That the plaintiffs have the right to take within the precincts of the said temple whatever is put into their hands as gift by their clients at the time of worship etc. (4) That a perpetual injunction be issued restraining the defendant 'Rawal' from interfering with the immemorial rights of the plaintiffs.

The defendant, in his written statement, admitted that the Pandas did sometimes accompany rich pilgrims as their guides and receive presents from them for the services they rendered. It was also admitted that the plaintiffs in their individual capacity as Hindus had the right to enter the temple of Badrinath for purposes of worship. It was asserted, however, that it was neither necessary nor desirable that the plaintiffs should be allowed to accompany their Yajmans or clients into the temple, as the defendant himself made adequate arrangements for 'darshan' and worship by the pilgrims; and he, as the sole trustee and manager of the temple, had the right to regulate entry into the temple so that over-crowding might be avoided and order maintained inside it. It was further pleaded that the suit of the plaintiffs was barred by res judicata and the law of limitation.

On these pleadings, two issues of a preliminary nature were framed by the Civil Judge, one of them being, whether the plaintiffs' suit was barred by res judicata. This issue was decided against the plaintiff and the Civil Judge dismissed the suit on 18-9-1934 holding that the suit was barred by the rule of res judicata, as an earlier suit brought by five of the Deoprayagi Pandas and claiming identical reliefs against the 'Rawal' was dismissed by the Commissioner of the Kumaun Division in the year 1896. Against this order of dismissal, an appeal was taken by the plaintiffs to the High Court of Allahabad and a Division Bench of the High Court, by its judgment dated 23rd May, 1938, reversed the decision of the Civil Judge on this preliminary point and remanded the case for hearing

of the suit on its merits. The case then went back before the Civil Judge and while it was still pending, the Sri Badrinath Temple Act was passed. A temple committee being formed in accordance with the provisions of this Act. the said committee through its Secretary, was impleaded as Defendant No. 2 in the suit. The committee filed a fresh written statement in which certain additional grounds were taken. It was contended primarily that the suit as framed, was not maintainable by reason of the provisions of Sri Badrinath Temple Act of 1939, which abrogated all previous rights and customs and vested the ownership of the temple and its endowments in the temple committee. It was asserted, further, that all gifts made within the precincts of the temple would vest in the temple committee under section 3(b) of the Act and that the committee had the absolute right to regulate entry of persons inside the temple.

A number of issues were framed after this written statement was filed, and on hearing the evidence adduced by the parties, the Civil Judge disposed of the suit by his judgment dated 4th March, 1941. The suit was decreed in part and the plaintiffs were given a declaration in their favour on one of the points in an attenuated and restricted form. Besides certain pleas in bar which were raised by the defendants in their written statements and in regard to which the trial judge's decision was in favour of the plaintiffs, the substantial controversy between the parties centred round the two following points:

- (1) Whether the Deoprayagi Pandas could accompany their Yajmans or clients inside the temple and assist them in the 'darshan' and worship of the deities
- (2) Whether the Pandas would have the right to accept within the precincts of the temple whatever was paid by the pilgrims as gifts or presents to them and not to the temple ?

As regards the first point, the learned Civil Judge reviewed the entire evidence relating to the practice of admitting the Pandas along with their Yajmans inside the temple, as it obtained from very early times down to the date of the institution of the suit. It appears that in 1892 certain rules were framed by the then 'Rawal' for regulation of pilgrims in the Badrinath temple, and to these rules the Commissioner of Kumaun Division accorded his sanction on 4th July, 1892. One of these rules, namely Rule (3), expressly laid down that "at the time of 'darshan' by the pilgrims, no other persons and Pandas shall be allowed to go inside the temple along with the pilgrims". On 22nd October, 1894, an application was filed before the Commissioner of Kumaun Division by some residents of Deoprayag complaining of unjust prohibition from entering the temple by the new manager and it was prayed that directions might be given to the said Manager to desist from encroaching upon the time-honoured rights of the Pandas. On 28th October 1894, the Commissioner ordered that a copy of the petition might be sent to the Manager. for report and in the body of the order he recorded his opinion that "the duty of the Pandas consists normally in escorting the pilgrims to the temple precincts. Their entering the temple can be permitted when they did so as pilgrims." The petition was eventually rejected, and on 19th August, 1895. five Deoprayagi Pandas filed a suit in the Court of the Deputy Collector, Garhwal, who was invested with the powers of a Civil Court, praying for a declaration of their right to go inside the temple with their Yajmans which the 'Rawal' was not willing to allow unless he gave special permission. The trial court allowed the plaintiffs' prayer but, on appeal, the judgment was reversed and the suit was dismissed. This order of dismissal was affirmed on Second Appeal by the Commissioner of Kumaun Division

who had the powers of a High Court in regard to this area, by his order dated 9th March, 1896. This is the earlier decision on the strength of which the plea of res judicata was taken by the defendant in the present suit. According to the learned Civil Judge, after the rules as mentioned above were framed in 1892 and the judgment of the Commissioner, Kumaun Division, in the Civil Suit was given in 1896, it was the 'Rawal' who decided whether or not he would give permission to any particular Panda to go inside the temple as an escort of his Yajmans and practice was almost uniform on this point down to the year 1903. The same practice prevailed, according to the learned Judge, from 1903 to 1920. From 1921, however, the practice became lax to a great extent and from the evidence of respectable witnesses examined on behalf of the plaintiffs, the learned Judge was of opinion that in many cases the Pandas were able to go inside the temple without any let or hindrance and without seeking any express permission from the 'Rawal'. A definite challenge to the rights of the Pandas occurred again in 1933 which led to the institution of the present suit. After reviewing this evidence, the learned Civil Judge discussed the provisions of the Shri Badrinath Temple Act bearing on this point, and summed up his conclusions as follows: -

"In my view under the scheme of the Shri Badrinath Act, the Pandas or pilgrims have no absolute right to go inside the temple, regardless of the conditions imposed by the Committee about entry into the temple, but ordinarily in the entry of the pilgrims or Pandas is in accordance with the rules or bye-laws framed by the Committee the pilgrims can always go inside accompanied by their Pandas, who are entitled as devout Hindus to go inside the temple, and perform worship there, and can assist their Yajmans also. In other words, there is no right of the plaintiffs which has to be recognised, and can be recognised, on the grounds of custom, usage, or otherwise, that they can without any let or hindrance and regardless of the conditions imposed by the Committee, enter the temple with the pilgrims whenever they like. Like other pilgrims, and persons who are all subject to the control of the conditions that may be imposed by the Committee, the Deoprayagi Pandas can also enter the temple, perform worship there, and even help their Yajmans who happen to be inside the temple. To lay down an absolute prohibition against them would not be in accordance with the provisions of Shri Badrinath Temple Act, and similarly to recognise that they have an absolute right to enter the temple with the pilgrims, would also nullify a number of provisions in the Shri Badrinath Temple Act. Issue No. 2 is decided accordingly in the negative, but subject to recognition of the conditional right of the plaintiffs to accompany their pilgrims and help them in the 'darshan', as mentioned above subject to the control of the Committee."

In spite of this finding, which is certainly not very definite the Court dismissed in toto the plaintiffs' prayer No. 2 in the plaint, the reason given being that no absolute right as was claimed by the plaintiffs was established on the footing of a custom or otherwise. As regards the other point, the learned Judge was of opinion that although a Panda had no absolute right to go inside the temple along with his clients, yet if the committee or the temple authorities allowed him to do so, there was nothing in law or custom which could prevent him from accepting a gift which any pilgrim might desire to make in his favour. The result was that the learned Judge gave the plaintiffs a declaration in the following terms :--

"The plaintiffs' suit is decreed for a declaration that they have a right to accept within the precincts of the temple whatever was put into their hands as gifts (Dan or Dakshina or Shankalp) by the pilgrims, for the benefit of the plaintiffs and not the temple, and to retain such gifts for their personal benefit. This right is however subject to the administrative control of the temple committee so far as the maintenance of order and decency and the enforcement of proper behaviour within the temple are concerned. The exercise of this right will further be restricted by any special or general conditions imposed by the Committee of management under any bye-law framed by it in accordance with the provisions of Shri Badrinath Temple Act or any other special law that may hereafter be applicable to the temple."

The rest of the plaintiffs' claim was dismissed. Against this judgment, the plaintiffs took an appeal to the High Court of Allahabad. The defendants also preferred cross-objections challenging the propriety of that part of the trial Court's decree which was in favour of the plaintiffs. The appeal was heard by a Division Bench consisting of Varma C.J. and Mathur J. and, by their judgment dated 22nd November, 1946, the learned Judges dismissed the plaintiffs' appeal and allowed the cross objections filed by the defendants. Thus, the decision resulted in a total dismissal of the plaintiffs' suit. It is from this judgment that the present appeal has come before us, It was held by the High Court that the plaintiffs failed miserably to establish that there was any immemorial usage in existence under which they were entitled to accompany the pilgrims, as of right, inside the precincts of the temple. It was held also that even if any such usage existed, that must be deemed to have been abrogated by the provisions of Shri Badrinath Temple Act, and reference was made in this connection to section 25 (1)(m) of the Act, which empowers the temple committee to frame bye-laws not inconsistent with the provisions of the Act for the "maintenance of order inside the temple and regulating the entry of persons there- in."

It is to be noted that after the judgment of the trial court was delivered and the appeal came up for hearing before the High Court, the Badrinath Temple Committee passed a resolution which was approved of by the Governor of the U.P. State, and was to the following effect :-

"Subject to the provision of bye-laws and any direction given by the committee, the Pandas can accompany their Yajmans within the temple."

This resolution was communicated to the plaintiffs by the 2nd defendant by a letter dated 29th May, 1942, and undoubtedly after passing of this resolution, the grievance of the plaintiffs in regard to temple entry disappeared to a large extent. The High Court however, refused to give the plaintiffs a declaration of their right in this respect even in a limited form as, in its opinion, the plaintiffs could not claim such declaration as a matter of right. The view taken by the High Court seems to be that it is entirely for the committee to decide, whether the Pandas should be allowed to enter the temple at all, and, if so, to what extent and under what conditions.

On the other question relating to the right of the plaintiffs to accept gifts made in their favour by the pilgrims within the precincts of the temple, it was held by the High Court that under section 3 (b) of the Shri Badrinath Temple Act, such gifts would become part of the endowment, and the donees

would be incapable of laying any claim to the same. It was further, held that bye-law (8) of the Puja Bye-laws framed by the temple committee which prevents a person other than those whose rights have been specifically recognised by the Committee, from receiving any gifts within the precincts of the temple, was quite a legitimate provision the making of which was within the rule-making authority of the committee of management. It was held, therefore, that in view of this rule, the plaintiffs' claim in regard to receiving of gifts within the temple was not maintainable in law. Mr. Iyengar, appearing in support of the appeal before us, has assailed the propriety of the High Court's decision on both these points.

The first point that requires consideration is whether the plaintiffs can, on the facts admitted and found in this case, claim a declaration of their right to accompany the Yajmans or clients inside the Badrinath temple and assist them in having 'darshan' of the deities and in performing such ceremonies as individual worshipers may perform. Mr. Dar, who appears on behalf of the respondents, draws our attention to the fact that this right has practically been conceded by the temple committee in their resolution passed in March, 1942, referred to already. The learned counsel has very fairly stated to us that he would have no objection if the plaintiffs are given a declaration of their rights in this respect in some suitable form as might safeguard their interest, without in any way trenching upon the rights of temple committee and thereby obviate all disputes in the future.

It seems to us that the approach of the court below to this aspect of the case has not been quite proper, and, to avoid any possible misconception, we would desire to state succinctly what the correct legal position is. Once it is admitted, as in fact has been admitted in the present case, that the temple is a public place of worship of the Hindus, the right of entrance into the temple for purposes of 'darshan' or worship is a right which flows from the nature of the institution itself, and for the acquisition of such rights, no custom or in memorial usage need be asserted or proved. As the Panda as well as his client are both Hindu worshippers, there can be nothing wrong in the one's accompanying the other inside the temple and subject to what we will state presently, the fact that the pilgrim, being a stranger to the spot, takes the assistance of the Panda in the matter of 'darshan' or worship of the deities or that the landa gets remuneration from his client for the services he renders, does not in any way affect the legal rights of either of them. In law, it makes no difference whether one performs the act of worship himself or is aided or guided by another in the performance of them. If the Pandas claim any special right which is not enjoyed ordinarily by members of the Hindu public, they would undoubtedly have to establish such rights on the basis of custom, usage or otherwise.

This right of entry into a public temple is, however, not an unregulated or unrestricted right. It is open to the trustees of a public temple to regulate the time of public visits and fix certain hours of the day during which alone members of the public would be allowed access to the shrine. The public may also be denied access to certain particularly sacred parts of the temple, e.g., the inner sanctuary or as it is said the Holy of Holies' where the deity is actually located. Quite apart from these, it is always competent to the temple authorities to make and enforce rules to ensure good order and decency of worship and prevent overcrowding in a temple. Good conduct or orderly behaviour is always an obligatory condition of admission into a temple (1), and this principle has been accepted



by and recognised in the Shri Badrinath Temple Act, section 25 of which provides for framing of bye-laws by the temple committee inter alia for maintenance of order inside the temple and regulating the entry of persons within it(2).

(1) Vide Kalidas Jivram v. Gor Parjaram, I.L.R. 15 Bom. p. 309; Thackeray v. Harbhum, I.L.R. 8 Bom. p. 432. (2) Vide Section 25 (1)(m).

The true position, therefore, is that the plaintiffs' right of entering the temple along with their Yajmans is not a precarious or a permissive right depending for its existence upon the arbitrary discretion of the temple authorities; it is a legal right in the true sense of the expression but it can be exercised subject to the restrictions which the temple committee may impose in good faith for maintenance of order and decorum within the temple and for ensuring proper performance of customary worship. In our opinion, the plaintiffs are entitled to a declaration in this form. We now come to the other point which is the real bone of contention between the parties to this appeal, and the question for consideration is whether the plaintiffs are entitled to a declaration that they have a right to take, within the precincts of the temple, whatever is put into their hands as gifts by their clients at the time of worship. The trial court, as pointed out above, gave the plaintiffs a qualified declaration on this point, though the High Court rejected this claim altogether. Mr. Iyengar has vehemently assailed the propriety of the grounds upon which the decision of the High Court rests, whereas Mr. Dar has contended inter alia that the claim of the plaintiffs under this head is wholly untenable in view of the provision of bye-law (8) of the Puja Bye-laws framed by the temple committee.

It may be stated at the outset that as the gift, if any, which a pilgrim might choose to make within the temple precincts is entirely a voluntary act on his part and as he could not be compelled to make a gift either in favour of the Pandas or anybody else, there could strictly speaking, be no legal right in the plaintiffs to receive any gift from his client which can be declared by a court of law. The plaintiffs do accept the position that the pilgrims are not bound' to give anything to the Pandas by way of Dakshina or sacrificial fee at the conclusion of the ceremonies in the temple; but what they say is this that if the pilgrims choose to make any gift to them, the temple committee could not, in law, prevent the latter from accepting the same and treat such gifts as part of the temple property. It is argued that bye-law (8) of the Puja Bye-laws is illegal and ultra vires and cannot take away the legal right of the donee to the gifted property under the ordinary law which has not been and cannot be affected in any way by the provisions of the Sri Badrinath Temple Act.

A number of respectable witnesses examined on behalf of the plaintiffs do say that when they went on pilgrimage to Badrinath they made gifts to their Pandas inside the temple at the close of the ceremony of darshan and worship. But the evidence taken, even at its face value, does not establish that the practice of making gifts to Pandas within the temple is a general one or that the pilgrims regard it as an indispensable part of the ceremony of worship; many of the witnesses plainly admit that they do not remember to have made any gifts at all within the temple precincts and others say that they paid dakshina or sacrificial fees to all the Brahmans who were found inside the temple at that time and not exclusively to their Pandas. It is also stated that suphal or final blessing is Obtained from the Pandas by the pilgrims after making presents to them at the place called Tapta

Kundu where the hot spring lies which is outside the temple. Mr. Iyengar has drawn our attention to certain texts from the Kedar Kanda of Skanda Purana which describe the glory of the deity Badrinath, to show that it is a religious duty enjoined by the Hindu scriptures that a worshipper who goes to Badrikasram should make gifts to Brahmans after the darshan of the idol is obtained and offerings are made to it. An English rendering of the passages relied upon by the learned counsel would read thus:-

"After having bathed in the Ganges, in the Narada Hrada (Kund) and others (Hradas), one (worshipper) shall bathe in the Vahni Tirth ( Tapta Kunda) after performing the obliga-

tory duties and with his mind kept under control, he shall go into the temple of Badri- nath with his mind concentrated on Shri Hari. He shall make offerings to the best of his capacity and with utmost devo- tion. Then he shall look at the All Pervading Narayana from crown to foot, and HERE make gifts to Brahmans to the best of his capacity. Thereafter, he shall do PRADAKSHINA (go- round) with the utmost devotion. Then he shall come back to the Tirthas (Vahni Tirtha etc.) and make gifts according to his means"(1).

It cannot and is not disputed that according to ortho- dox Hindu ideas, gift to Brahmans is considered as a merito- rious act and there are texts, to some of which Mr. Iyengar drew our attention, which extol the merits of such gifts when made at a sacred place or within a temple or on the banks of a holy river. It may be as Mr. Iyengar suggests that the idea of making gifts within the temple had its origin in the religious texts to which the learned counsel drew our attention. But, the point that requires considera- tion in the present case is a different and much narrower one. The question is whether under the powers of making bye-laws which are conferred by the Sri Badrinath Temple Act upon the managing committee, the latter could make a rule as they have done, by which all persons other than those whose rights are specifically recognised are disabled from receiv- ing gifts within the precincts of the temple.

It is perfectly true that under the general law, nobody can be prevented from accepting a gift which another person may be inclined to make in his favour, and it is immate- rial in such cases at what place the gift is actually made. One has to enquire, therefore, on what grounds the committee can interdict the taking of any gifts within the temple precincts. The High Court seems to be of opinion--and this view is sought to be supported on behalf of the respondents before us--that the Sri Badrinath Temple Act itself has in express (1) Skanda purana, Kedar Khand, Badri Mahatma, Chapter VI, Verses 46-49.

terms abrogated the rights of the donee in regard to a gift made to him within the ,temple and as such gifts come within the definition of 'endowment' as given in the Act, the temple committee gets a controlling hand over them and can make any regulations in relation thereto. Reliance is placed in this connection upon section a (b) of the Sri Badrinath Temple Act which lays down that the expression "endowment" in relation to the Act "means all property moveable or immoveable belonging to or given or endowed for the maintenance or improvement of, or additions to, or worship in the temple, or for the performance of any service or charity connected therewith and

includes the idols in- stalled therein, the premises of the said temple and gifts of property made to anyone within the precincts of the temple." The definition is undoubtedly couched in very wide language but it is to be noted that under section 4 of the Act which deals with the vesting of property, a gift does not vest in the temple at all unless it is made for the benefit of the temple or for the convenience, comfort or benefit of the pilgrims.

It is conceded by Mr. Dar that a gift intended for the personal benefit of the Pandas cannot vest in the temple and this is quite in accordance with the existing principles of Hindu law. He contends, however, that such gifts could not vest in the donee, as well, in accordance with the definition of "endowment" given in section a (b) of the Sri Badrinath Temple Act. In other words, according to the interpretation which he would like to put upon section 3 (b) of the Act, such gifts should be regarded as totally void after the passing of the Act and consequently title to the thing given would still remain in the donor even after the gift is made. This does not seem to us to be a sound view to take. If a legislation wants to take away the proprietary right which a person acquires under the ordinary law, it must express its intention in clear and unambiguous terms. We are unable to spell any such intention out of the language used in section 3 (b) of the Sri Badrinath Temple Act. It may be that the wording of this sub-section is defective and that there is an apparent conflict between the provision of this sub-section and that of section 4 of the Act. It is an arguable point whether the expression "gifts of property made to any one" should not be construed to mean gifts made to any one for the benefit of the temple or for other purposes as are specified in section 4. But it is not necessary for our purpose to express any opinion on that point in the present case. All that we desire to say is that there is nothing in the Sri Badrinath Temple Act which lays down that a gift made to any person inside the temple and intended for the benefit of that person shall not belong to him.

But, even if the gifts made within the temple and intended for the benefit of the donee personally cannot vest in the temple under section 4 of the Sri Badrinath Temple Act, the question still remains whether the committee in exercise of their powers to make bye-laws, can frame a rule that no such gifts should be allowed to be made within the temple and whatever gifts the pilgrims might choose to make in favour of any person which is unconnected with offerings to the deity must be made outside the temple precincts. Section 25 of the Act empowers the committee to make bye-laws not inconsistent with the Act or the rules made thereunder or any other law for a variety of purposes which are enumerated in the different clauses of the section; and clauses (m) and (n) run as follows:

(m) The maintenance of order within the temple or inside the temple and regulating the entry of persons therein; and

(n) The performance of duties prescribed in section 23.

Section 23 lays down the duties of the committee and sub-section (9) prescribes it to be duty of the committee to do all such things as may be incidental and conducive to the efficient management of the temple and endowments and the convenience of the pilgrims. In our opinion, bye-law (8) of the Puja Bye-laws referred to above, which forbids the acceptance of the gifts by any person within the temple, unless he comes within the category of persons specifically authorised by the committee to

receive the same, is a perfectly legitimate bye-law which it was quite competent for the committee to enact under the terms of clauses (m) and (n) of 25 referred to above. It will be remembered that the religious duty to make gifts within the temple or at sacred places which is enjoined on Hindu worshippers by the texts relied upon by Mr. Iyengar has no particular reference to the Pandas who accompany the worshipper. The injunction is to make gifts in favour of Brahmans generally and the Pandas, because they are Brahmans and happen to be available at the spot, naturally become recipients of such gifts. It is a thing too well known to require mention that in many of the Hindu temples of renown in India, the pilgrims after their worship is finished, or even before that, are literally besieged by an army of mendicants including many Sadhus or ascetics, the begging Brahmans who abound in all sacred places, and even people who are associated with various duties in the temple itself. The presence of a large number of such persons who certainly do not come inside the temple as worshippers is positively detrimental to the maintenance of good order, decency and solemnity in the temple and not unoften it is a source of very great annoyance and discomfort to the pilgrims themselves. It seems to us that one of the objects which the temple committee had in view in framing these byelaws was to prevent this religious mendicancy showing it itself in an unseemly manner within the precincts of the temple itself. Bye-law 8 of the Puja Bye-laws referred to above, which prevents taking of a gift by any person within the temple, lays down, further, that the permanent employees of the temple shall not receive or solicit for any remuneration, reward or Dakshina in any form from the pilgrims. This prohibition is not confined to the temple but extends also to places outside it. Then again, bye-law 15 specifically provides that no Sadhu or beggar shall beg or sit for begging for alms within the temple. We think, therefore, that for the purpose of preventing overcrowding within the temple and to ensure order, decency and worshipful behaviour on the part of those who enter into it, the committee was quite justified in framing this bye-law which lays down in substance that whatever gifts a pilgrim might be desirous of making and which is unconnected with the offerings to the deity shall be made outside the temple precincts and not inside it. In our opinion, the Pandas do not stand to lose anything by reason of this regulation and their grievance is more or less a sentimental one.

As we have said already, the gift intended for the Pandas can under no circumstances vest in the temple, but a regulation of this character could certainly be deemed to be necessary as conducive to efficient management of the temple and endowments, the convenience of the pilgrims and the maintenance of order and decent behaviour within the temple precincts. We do not see how such bye-law can be said to be, in any way, inconsistent with the provisions of the Act. It is certainly confined to the circumstances contemplated by the Statute itself and is not repugnant to the general principles of Hindu law which we have referred to already. It does not, in our opinion, take away the proprietary right of any person which is recognised under ordinary law. Thus, although we cannot agree with the High Court of Allahabad regarding the interpretation that it has put upon sections 3 (b) and 4 of the Act, we think that bye-law 8 of the Puja Bye-laws is perfectly valid and is within the ambit of the powers conferred upon the committee by section 25 of the Act.

The appeal is thus allowed only in part. The plaintiffs shall have a declaration that they are entitled to accompany their Yajmans inside the temple subject to any bye-law or rule made by the committee in proper exercise of their powers under section 25 of the Sri Badrinath Temple Act. The other prayer of the plaintiffs is rejected.

As the appeal succeeds in part and as it raised questions of general importance with regard to which there were longstanding disputes between the parties, we think that the proper order should be to direct each party to bear his own costs in all the Courts. The costs of the defendant shall come out of the temple funds.

Appeal allowed in part.

Agent for the appellants: C.P. Lal.

Agent for the respondent :S. S. Sukla.