The State Of Madhya Pradesh vs Pujari Utthan Avam Kalyan Samiti on 6 September, 2021

Equivalent citations: AIR 2021 SUPREME COURT 4245, AIRONLINE 2021 SC 690

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Bench: A.S. Bopanna, Hemant Gupta

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4850 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 33675 OF 2017)

The STATE OF MADHYA PRADESH & ORS. .....APPELLAN

VERSUS

PUJARI UTTHAN AVAM KALYAN SAMITI & ANR.
.....RESPONDENT

JUDGMENT

HEMANT GUPTA, J.

1. The order dated 14.06.2016 passed in an intra-court appeal by the Division Bench of the Madhya Pradesh High Court is the subject matter of challenge herein at the instance of State of Madhya Pradesh. The learned Single Bench allowed the writ petition filed by Association of Priests registered under the M.P. Society Registrikaran Adhiniyam 1973. Such society has 251 members in the Districts of Dhar, Indore, Ratlam, Shajapur, Ujjain, Jhabua etc.

2. 16:23:53 IST Reason: The challenge in the writ petition was to quash the circulars dated 21.03.1994 and 07.06.2008 whereby the names of Pujari were ordered to be deleted from the revenue record. The said writ petition was allowed on 20.11.2013 relying upon the judgments of the High Court in Ghanshyamdas v. State of M.P1 and Kashi Bhatti through LRs v. State of M.P2. The learned Single Bench held that the circulars dated 12.11.1992 and 21.03.1994 were already quashed

by the High Court in the year 1995 and 1999 respectively and therefore there was no justification on the part of the State Government to issue circular dated 07.06.2008 directing the Revenue Commissioner to follow the circular dated 21.03.1994. Learned Single Bench held as under:

> "The name of Collector is being mentioned as manager. It is true that by mentioning the name of Collector as manager, properties owned by the Temple were saved but at the same time the properties could not be managed properly as it is not expected from the Collector to manage the properties of the Temple. To protect the interest of Pujari's who are entitled to get the benefits of the scheme which are being introduced by the Government for the benefit of the agriculturist. To protect the interest of making the law in that regard by suitable legislation as the problem is lying in the Court in number of cases for last 30 years. In result the impugned order dated 07/06/08 (Annexure P/21) is quashed."

3. In an intra-court appeal against the aforesaid findings, the High Court referred to a judgment of Division Bench in State of M.P. v. Ghanshyamdas3, an order passed against the order in writ petition reported as Ghanshyamdas I. The Court inter alia held that Pujaris had no right to alienate the properties of the temple.

1 1995 Revenue Nirnaya (RN) 235 (Hereinafter referred to as the 'Ghanshyamdas I) 2 2009 R.N. 179 3 1999 R.N. 25 (Hereinafter referred to as the 'Ghanshyamdas II) They have rights only with respect to either cultivate the land or get it cultivated through servants. The High Court further held that if the temple was managed by the Pujari, then keeping in view the law laid down from time to time, his name was required to be mentioned as Pujari along with the name of the deity. The Court held as under:

> "The learned Writ Court relying on the decision of the cases of State of M.P. & others v. Ghanshyamdas & Others v. (supra), Kanchaniya v. Sheoram (supra) and Pancham Singh v. Ramkishandas (supra) has held that right of Pujaris continued from their forefather, cannot be taken away by executive instructions. There was no justification on the part of the State Government to advice to Revenue Commissioner to follow circular dated 21.03.1994, when the same was quashed. It is not in dispute that as per Clause 5 of the Land Records Manual in Column No.3 of Khasra Entries deals with the name of occupier; Column No.4 deals with name of bhoomiswami or lessees or his representatives while Column No.12 deals with the remarks. Undisputedly, the land, which is owned by the temple or deity or the land owned by temple or by the trust, name of the deity/temple or trust, as the case may be, is required to be mentioned in Column No.3. If the temple is managed by the Pujari, then keeping in view the law laid down by this Court from time to time, his name is required to be mentioned as Pujari along with the name of the deity." (Emphasis supplied)

4. Before this Court, the argument of Mr. Saurabh Mishra, learned counsel appearing for the appellant, is that the preparation of revenue records including as to what entry should be incorporated in such record has been prescribed in the M.P. Land

Revenue Code, 1959 (for short "the Code"). The State Government, in exercise of the powers conferred under the Code, had issued executive instructions to delete the names of Pujari from the revenue record so as to protect the temple properties from unauthorized sale by the Pujaris. Learned counsel for the appellant referred to the first circular issued by the State on 04.08.1969 in response to the complaints received that Maufi land (land exempted from payment of revenue) was being recorded in individual names and was being illegally transferred. It was directed that Maufi was granted to a deity who was the owner of the temple and the land appended was to be that of the deity alone. Thereafter, another circular dated 12.04.1974 was issued highlighting the issue that the land which belonged to the temple and not covered under the Khasgi Trust was being misused by the Pujaris by way of sale or mortgage. The Khasgi Trust was formed for the purpose of the properties of Holkar family. Therefore, to save land which belongs to the temple and not covered under the Khasgi Trust, in addition to the name of Pujari, name of the Collector was to be recorded as manager in the revenue record. The reference was made to Sections 108, 114 and 258 of the Code to support his arguments.

5. Mr. Lahoti, counsel of the respondents, submitted that the Pujaris have been conferred Bhumiswami (ownership) rights, a right which cannot be taken away by executive instructions. It was argued that in terms of proviso to Section 57, the rights granted to the Pujaris have been protected and would remain unaffected by the Code. In terms of Section 158, every person, in respect of land held in the Madhya Bharat region as a Pakka tenant or as a Muafidar, Inamdar or Concessional holder, as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950), confers Bhumiswami rights on the pujari, which has further been protected by a conjoint reading of Section 57 and Section 158 of the Code. The Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) was enacted after the merger of Gwalior and Holkar State in the year 1950, prior to reorganization of State of Madhya Pradesh in the year 1956. Mr. Lahoti also refers to 'Gwalior Act' to argue that such Act conferred proprietary rights to the priest which were initially protected by the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) and later by virtue of Section 158 of the Code. The reliance was placed upon the judgment of the Division Bench of the High Court in Shri Krishna v. State of M.P.4. Mr. Lahoti relied upon Sections 57, 158 & 159 of the Code.

6. The provisions of the Code as are relevant for the present order read as under:

"2. Definitions-

(1) In this Code, unless there is anything repugnant to the subject or context, xxx xxx xxx 4 2012 (4) MPLJ 466 (z-3) "unoccupied land" means the land in a village other than the abadi or service land, or the land held by a Bhumiswami, a tenant or a government lessee.

57. State ownership in all lands-

(1) All lands belong to the State Government and it is hereby declared that all such lands, including Standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government:

Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property. 91A. Power to make rule-

The State Government may make rules for regulating generally the conduct of a revenue survey or Settlement under this Chapter.

108. Record of rights.- [(1)] A record-of-rights shall in accordance with rules made in this behalf be prepared and maintained for every village and such record shall include the following particulars:-

(a) the names of all Bhumiswamis together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated;

(b) the names of all occupancy tenants and Government lessees together with survey numbers or plot numbers held by them and their area irrigated or unirrigated;

(c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto;

(d) the rent or land revenue, if any, payable by such persons;

and

(e) such other particulars as may be prescribed.

[(2) The record-of-rights mentioned in sub-section (1) shall be prepared during a [revenue survey] or whenever the State Government may, by notification, so direct.]

114. Land records.- In addition to the map and Bhoo Adhikar Pustikas, there shall be prepared for each village a khasra or field book and such other land records as may be prescribed.

116. Disputes regarding entry in khasra or in any other land records – (1) If any person is aggrieved by an entry made in the land records prepared under section 114 in respect of matters other than those referred to in section 108, he shall apply to the Tahsildar for its corrections within one year of the date of such entry.

(2) The Tahsildar shall, after making such enquiry as he may deem fit, pass necessary orders in the matter.

121. Power to make rules for land records – The State Government may make rules for regulating the preparation, maintenance and revision of land records required for the purposes of this Code.

158. Bhumiswami- [(1)] Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code namely-

(a) every person in respect of land held by him in the Mahakoshal region in Bhumiswami or Bhumidhari rights in accordance with the provisions of the Madhya Pradesh Land Revenue Code, 1954 (II of 1955);

(b) every person in respect of land held by him in the Madhya Bharat region as a Pakka tenant or as a Muafidar, Inamdar or Concessional holder, as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samwat 2007 (66 of 1950);

(c) every person in respect of land held by him in the Bhopal region as an occupant s defined in the Bhopal State Land Revenue Act, 1932 (IV of 1932);

160. Revocation of exemption from liability for land revenue-

(1) Every Muafi of Inam land, wherever situate, which was heretofore exempted from payment of the whole or part of the land revenue by a special grant from the Government or under the provisions of any law for the time being in force or in pursuance of any other instrument shall, notwithstanding anything contained in any such grant, law or instrument be liable from the commencement of the revenue year next following the coming into force of this Code, to the payment of full land revenue assessable thereon.

(2) Where any such Muafi or Inam land is held for the maintenance or upkeep of any public religious or charitable institution, the State Government may, on the application of such institution, in the prescribed form [and made within such time as may be prescribed] grant to it such annuity not exceeding the amount of the exemption from land revenue enjoyed by it, as may be considered reasonable for the proper maintenance or upkeep of such institution or for the continuance of service rendered by it.

258. General rule making power.-

(1) The State Government may make rules generally for the purpose of carrying into effect the provisions of this Code. (2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for-

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(xii) the regulation of the conduct of revenue survey or settlement under section 91-A;

(xxii) the prescription of the form of, and the additional particulars to be entered in the papers to be included in the record of rights under section 108; (xxv) (a) prescription of other land records under section 114(1),

(b) prescription of fee on the payment of which Rasid Bahi shall be provided under section 114 (2) and the prescription of entries which it shall contain;

(xxvii) preparation and maintenance and revision of land records under section 121"

7. We have heard the learned counsel for the parties and find that there is lack of clarity in the High Court in regard to the legal jurisprudence.

Different judgments have been referred to in respect of rights of the priests as to whether they can be treated as Bhumiswami or if they only hold the temple land for the purpose of management of the property of the temple, which actually vests with the deity.

8. One of the earliest judgments on the right of a priest was rendered by the Division Bench of Madhya Pradesh High Court reported as Pancham Singh v. Ramkishandas Guru Ramdas & Ors.5. Section 13 of the Qawaid Muafidaran Jujve Araji, Samwat 1991 6 was examined as to the remedy of ejectment of a pujari who claimed status of Mourushi Kashtakar as under Section 248 (1) of the Code or by way of a civil suit. It was held that a Pujari is not a Kashtkar Mourushi, i.e., tenant in cultivation or a government lessee or an ordinary tenant of the Maufi lands but holds such land on behalf of the Aukaf Department for the purpose of management. The High Court held as under:

> "7. ..... The Maufi lands all the while belonged to the Government. The former Pujari was, therefore, not a Kashtakar Mourusi or a Government lessee or an ordinary tenant of the maufi lands, but was merely holding them on behalf of the Aukaf Department for purposes of management.
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> 12. On a plain reading, the definition excludes a Pujari. The former Pujari was, therefore, not a Kashtakar Mourushi of the maufi land, but was merely holding them on behalf of Aukaf Department for purposes of management. Under the 2 nd Proviso to Section 365 of the Qanoon Mai, Gwalior, he had no right of 5 AIR 1972 MP 14 6 Hereinafter referred to as the 'Gwalior Act' transfer.
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> 16. We are, therefore, of the view that the former Pujari had no other status than that of a manager of the lands on behalf of the Aukaf Department. While it is accepted before us that the former Pujari had no right of transfer by mortgage or sale, it is

> urged that there was no restriction on sub-letting. It is also urged that the terms "Mourushi Kashtakar" and "Dakhilkar Kashtakar Bila Lagani" were synonymous and that, as every Mourushi Kashtakar had the right to sub-let, it necessarily follows that a Dakhilkar Kashtakar Bila Lagani had also a similar right. We are unable to agree with this line of reasoning. It would be repugnant to the nature of the grant itself to clothe such a person with a right of transfer of any kind. The whole purpose of the grant, which was for the upkeep of the temple, would be frustrated if the maufi lands were allowed to be sublet by the Pujari and new rights created in favour of a stranger.
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> 17. Where a grant of land is made in consideration for service to be rendered by a grantee, in lieu of wages, it is an implied condition of the grant that if the services are not performed or are not required, the grant can be resumed. The Parwana expressely stated that the grant in favour of the former Pujari was resumable for breach of any of the conditions set out therein, or upon his death or removal. The death of the former Pujari was, in the instant case, the terminal point. That being so, the grant lapsed with his death. As the grant created no interest in favour of the former Pujari, whatever rights the petitioners father, Thakur Murlidnarsingh had, also lapsed and he became a rank trespasser." (Emphasis Supplied)
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> 9. This Court in a judgment reported as Mst Kanchaniya and Others v.

Shiv Ram and Others7 considered the Gwalior Act as well as the Code. The decision of the High Court in Pancham Singh was approved, and it was held as under:

> "15. Shri Shiv Dayal has submitted that the learned Judges of 7 AIR 1992 SC 1239 the Division Bench of the High Court were in error in holding that a Pujari was not a Kashtakar Mourushi of the maufi land and that the said finding is contrary to the language of Section 13 of Kawaid Maufidaran wherein it is clearly stated that the Pujari would have the rights of a Kashtakar Mourushi. According to Shri Shiv Dayal the only limitation on the rights of the Pujari as a Kashtakar Mourushi was that contained in Section 265 of the Qanoon Mal whereby he was precluded from selling or mortgaging the maufi lands but there was no provision restricting his right to create a lease for cultivation of the lands.

We are unable to agree. Although under Section 13 of Kawaid Maufidaran, the right of a Kashtakar Mourushi have been conferred on the Pujari and under 265 of the Qanoon Mal, the restriction on his right was with regard to sale and mortgage only but it cannot be ignored that under Section 13 of Kawaid Maufidaran the right of a Kashtakar Mourushi which have been conferred on the Pujari is subject to the overriding condition that in case he does not perform his duties properly, he can be removed and another Pujari can be appointed and a patta could be issued in his favour. This is also borne out by definition of the expression 'Kashtakar Mourushi' in Section 2(29) of the Qanoon Mal which imposes the condition that the Aukaf Department would be entitled to dispossess, without an order of the court, the Pujari who obtains the right of Kashtakar Mourushi on the basis of Kawaid Maufidaran and who does not render his services properly. The matter is further made clear by the

prescribed form of the Parwana which is issued to the Pujari wherein it is also clearly mentioned that Pujari does not have any right in the land and his status is that of a manager and that he could get the land cultivated either himself or through others so that the income derived therefrom could be applied towards worship and upkeep of the temple and that the grant would be resumed for breach of any of the conditions or upon the death of the former Pujari. In other words, the rights of the Pujari do not stand on the same footing as those of a Kashtakar Mourushi in the ordinary sense who was entitled to all rights including the right to sell or mortgage. We are, therefore, in agreement with the view of the Division Bench of the Madhya Pradesh High Court in Panchamsingh case that a Pujari had no other status than that of the manager functioning under the control of the Aukaf Department and he had no right to transfer, either by way of sale or mortgage or by lease, the land entrusted to him. In that view of the matter, it must be held that the patta granted in favour of Malkhan by Vasudev Rao, father of respondent 1, was not valid and did not confers any right or interest on Malkhan in the land covered by the said patta." (Emphasis Supplied)

10. This Court further held that temple land does not fall in any of the excepted categories in Section 2(z-3), therefore, it was unoccupied land and set apart for a public purpose, i.e., for the upkeep of the temple. It was thus held that Patta granted in favour of Malkhan to cultivate the land in dispute came to an end on the death of Malkhan and the possession of the appellant over the land in dispute as legal heirs of Malkhan cannot be said to be authorised by respondent No.1.

"19. The land in dispute does not fall in any of the excepted categories mentioned in Section 2(z-3). It must, therefore, be held to be unoccupied land. Since it was set apart for a public purpose, viz., for the upkeep of temple, it can be said to be land set apart for a special purpose under clause (j) of sub-section (1) of Section 237 of the Code. What has to be seen is whether the possession of Malkhan of the same was unauthorised. It has been urged on behalf of the appellants that the possession of Malkhan could not be said to be unauthorised on the date of the filing of the application by Respondent 1 in view of the fact that Vasudev Rao, father of Respondent 1, had granted a patta permitting Malkhan to cultivate the land during his (Malkhan's) lifetime and after the death of Vasudev Rao, Respondent 1 had also granted a patta permitting Malkhan to continue in cultivation of the land in dispute and had been receiving Rs 100 annually as rent from Malkhan. .....In view of the death of Malkhan during the pendency of the writ petition in the High Court, the question whether Respondent 1 has granted a patta permitting Malkhan to cultivate the land in dispute during his lifetime, does not survive because even if it is held that the patta granted in favour of Malkhan by Respondent 1 permitted Malkhan to cultivate the land in dispute during his lifetime, the said authority under which Malkhan was in possession of the disputed land came to an end on the death of Malkhan and the possession of the appellants over the land in dispute after the death of Malkhan cannot be said to be authorised by Respondent

1."

11. A circular was issued on 28.5.1979 regarding the Devesthani land in respect to control and management of the land attached to the temples, in accordance with the manner mentioned in the circular. In the said circular, there was a restriction that the agricultural land owned by religious institutions should not be leased out for a period of more than 3 years. The priests were allowed to

lease up to first 10 acres of land for self-cultivation for maintenance and for management of temple without any auction and without any lease rent. Another 10 acres could be given to the Pujari for his self-agricultural purposes but on payment of lease rent. Such rent was to be deposited in the name of the deity and could be used for the maintenance of the temple. The remaining land could be leased by auction.

12. The policy of auction was challenged by way of a writ petition. The said writ petition was allowed. The order passed by learned Single Judge was challenged in appeal in a judgment reported as State of M.P. and others v. Mandir Shri Khande Rao8. The Bench relied upon the earlier Division Bench judgment reported as Ghanshyamdas II. However, while referring to the Gwalior Act, the Court held as under:

> "13. We are of the considered opinion that the provisions contained in Regulation 13 clearly envisaged the continuance of the Muafi and the rights vesting in the deity in respect of its properties including the agricultural holdings till the vesting of the ownership thereof in the State under the Management of its 8 1999 RN 392 department of "Aukaf" relating to 'Devasthan'. It is obvious, therefore, that so long as the rights of Muafidar were not extinguished vesting the properties including the agricultural holdings in the State and the revenue records were corrected showing the same as 'Milkiat Sarkar' under the management of department of Aukaf relating to Devasthan there could be no occasion for interfering in the management of the holding/land vesting in the Deity/Devasthan in any manner including the grant of temporary leases for the purpose of cultivation taking recourse to auction treating the holdings of the deity as 'Milkiat Sarkar' even though none of the conditions contemplated under Regulation 13 stood satisfied."

13. The Court held that, with respect to the State's right to auction property of the temple, once the land is vested with the deity/temple, the State cannot have a right to auction the property of the temple.

14. In Ghanshyamdas I, the learned Single Bench was not apprised of the judgments of the Division Bench in Pancham Singh or of this Court in Kanchaniya, and the same are not referred in the judgment. The Single Bench thus held that the proprietary rights conferred on a pujari could not be brought to an end by an executive instruction. The said judgment was partly overruled in Ghanshyamdas II.

15. The circular dated 12.11.1992 was issued wherein the name of the Collector was directed to be recorded as a manager whereas the name of the Pujari of the concerned Devasthan was to be recorded in Column No. 12. The said circular was under consideration before the Division Bench in Ghanshyamdas II. It was held that the Pujaris have no right to alienate the properties of the temple. They have to cultivate the land or to get the land cultivated through their servants for the maintenance of temple and also perform the daily rituals. They do not acquire any right to alienate the property of the temple. The Court held as under:-

> "13. The rights of Pujari have been considered in the case of Pancham Singh and Kanchaniya (supra) and a bare perusal of Regulation 12 and 13 of the Regulations indicates that the Pujaris have no right to alienate the properties of the temple. They have to cultivate the land or to get the land cultivated through their servants for the maintenance of temple and its daily rituals. They do not acquire any right to alienate the property of the temple.
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> 14. In the case of Pancham Singh (supra), it is held that the Pujaris have no right to alienate the property of the temple in any manner. Thus the Regulations 12 and 13 of the Regulations are plain and simple and must receive its legal meaning. The Pujari has no other status than that of a manager. He could get the land cultivated either himself or through servants, but he had no right to alienate them lands in any manner. It cast upon him a duty to keep the land under cultivation so that the income derived therefrom could be applied towards Pooja and upkeep of the temple. All the Muafi lands belong to the Government.

Pujaris not Kashtkar Mourushi of Government lossee or even the tenants of the Muafi lands but were merely holding the land either on behalf of the Aukuf Department or on behalf of the deity of the temple for the management of the temple. Under regulations 12 and 13 of the Regulations, Pujaris do not have the absolute right of inheritance.

23. From a bare reading of Regulations 12 and 13 of the Regulations, it is apparent that the Pujari's right of inheritance is subject to his qualification and is not automatic.

24. No Pujari or trustee or manager can claim the title of religious property. The property always belongs to the temple i.e. deity.

25. In the case of Rameshchandra v. Janki Ballabhji (AIR 1970 SC 532) it is held that the Pujari claiming proprietary rights amounts to mismanagement and is not fit to remain in possession or to continue as Pujari. Therefore, the persons claiming title over the property of the deity are not liable to continue as Pujari.

26. The executive inststruction issued by the Government is in the interest of the deity and to avoid wastage or misuse of the property of the temple. Even if the name of Pujari is recorded in column No. 12 of the Khasra it will not affect the rights of Pujari so long as he is performing his functions properly and cultivating the land or getting the land cultivated through servants.

27. It is therefore, held that placing the name of Pujari in column No. 12 of the Khasra does not affect the rights of Pujari. As discussed above and held in the cases of Kanchaniya and Pancham Singh (supra), the Pujaris do not have any right in the property of temple. Therefore, recording of their name is column No. 12 will not affect their rights since their rights are not affected as measures have been taken by the Government for the safety of the temple's property, which cannot be faulted with. The Government have always the right to issue directions or preparing norms for preserving the property of deity. The judgment of the learned single Bench is contrary to the judgment of

Kanchaniya's case (supra).

28. However, the directions of the State Government that the name of Pujari be deleted from all the columns of Khasra and should not be recorded anywhere is quashed, as the learned Advocate General frankly conceded that directions is bad in law."

16. A circular dated 21.03.1994 was issued wherein it was directed that the name of the Pujari should not be recorded in any of the column of the Panchnama (revenue record). The Collector was directed to maintain a separate register for maintaining the records of the priest. The High Court in Shri Krishna held that all those persons who were granted land or were recognised as Inamdar (in the erstwhile Indore State) for religious services rendered by them as Pujari have been recognised as Bhumiswami under the Code. The Pujaris were holding land for rendering religious services; therefore, a right had been created in their favour which could not be withdrawn by an executive instruction. The Court held as under:

> "5A. From the discussion above, it is evident that all those persons who were granted land or were recognised as Inamdar (in the erstwhile Indore State) for the religious services rendered by them as Pujari of the Temple have been recognised to be a Bhhomiswami under the Code and their names appeared as such in Revenue Records, since they were holding land for rendering religious services as Pujari of the Temple and the land was granted specifically for that purpose, the name of the Collector as Manager along with these pujaris was directed to be shown. This long possession and recording of their names in revenue records as Bhoomiswami or Managers has definitely created a right in their favour. It is an established principle of law that if any right has been vested in a person by certain statutory provisions, the same cannot be withdrawn by an executive instruction. Even if a person is required to be deprived of his vested right in a property, a legal procedure for the same will have to be adopted. If the State Government of MP feels that the recording of name of such persons as Bhoomiswami is non-est, then too it will have to give a notice to the person and an opportunity of hearing and after making due enquiry followed by a reasoned order (if it is found as such), the order for modification, corrections and change in the record can be done."

17. On the other hand, there are some judgments taking different view within the High Court including the one reported as Sadashiv Giri & Ors. v. Commissioner, Ujjain & Ors.9 wherein an argument was raised that the temple is in possession of land. However, the Court held that how could the temple have such possession, therefore, it was the Pujari who had been conferred the right to upkeep and perform puja by the then Jagirdars. The Pujaris were the Inamdars of the land in 9 1985 RN 317 question and thus became Bhumiswami when the Code came into force on 02.10.1959. The said judgment is clearly erroneous as the presiding deity of the temple is the owner of the land attached to the temple. The Pujari is only to perform puja and to maintain the properties of the deity. In fact, the Constitution Bench in a judgment reported as M. Siddiq (Dead) Through Legal Representatives v. Mahant Suresh Das and Others10 held as under:

> "511. ..... A pujari is merely a servant or appointee of a shebait and gains no independent right as a shebait despite having conducted ceremonies over a period of time. All the evidence relied upon to support the claim of late Baba Abhiram Das is restricted to his having performed puja at the disputed premises and does not confer any shebaiti rights."
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> 18. Hence, the Division Bench judgment in Shri Krishna has conferred the status of Bhumiswami on the priest but without bringing the judgment in Pancham Singh before the notice of the Court. Such Judgment has been rendered in ignorance of the binding Division Bench judgment which is supported by the law laid by Supreme Court in Mst.

Kanchaniya. The judgment in Sadashiv Giri is in respect of action of auction without the authority of law. The judgment in Pancham Singh was cited but question was not examined as the petitioners were said to trespassers by the State. The High Court found that the petitioners being in possession can be deprived of possession only in accordance with law.

10 (2020) 1 SCC 1

19. In the present case, the question which is required to be decided is whether a priest can be treated as Bhumiswami under the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) and as a consequence under the Code. The reliance of the re- spondent is on Gwalior Act. In some of the judgments mentioned above, the provisions of Gwalior Act have been described as 'Regula- tions' and in some as 'Sections'. Since it appears to be issued by the then ruler of Gwalior, the same has to be treated as a statute, having a force of law applicable in the erstwhile State of Gwalior.

20. This question has already been considered by the courts in Pancham Singh, which has further been affirmed by Kanchaniya. The Law is clear on the distinction that the Pujari is not a Kashtkar Mourushi, i.e., tenant in cultivation or a government lessee or an ordinary tenant of the maufi lands but holds such land on behalf of the Aukaf Department for the purpose of management. The Pujari is only a grantee to man- age the property of the deity and such grant can be reassumed if the Pujari fails to do the task assigned to him, i.e., to offer prayers and manage the land. He cannot be thus treated as a Bhumiswami. The Kanchaniya further clarifies that the Pujari does not have any right in the land and his status is only that of a manager. Rights of pujari do not stand on the same footing as that of Kashtkar Mourushi in the ordi- nary sense who are entitled to all rights including the right to sell or mortgage.

21. In a judgment reported as Ramchand (Dead) by Legal Representa-

tives v. Thakur Janki Ballabhji Maharaj and Another 11, it was held that if the Pujari claims proprietary rights over the property of the tem- ple, it is an act of mismanagement and he is not fit to remain in pos- session or to continue as a Pujari.

22. The contrary view expressed by the High Court in Ghanshyamdas I, Sadashiv Giri and Shri Krishna does not lay down good law in view of binding precedent of the Division Bench of the High Court in Pan- cham Singh as also of this Court in Kanchaniya. All these judgments presenting a contrasting view had not noticed the said binding prece- dents dealing with the rights of priest under the Gwalior Act.

23. Taking into consideration the past precedents, and the fact that under the Gwalior Act, Pujari had been given right to manage the property of the temple, it is clear that that does not elevate him to the status of Kashtkar Mourushi (tenant in cultivation).

24. The ancillary question which arises is whether the priest is Inamdar or Maufidar within the meaning of Section 158 (1)(b) of the Code. Such 11 AIR 1970 SC 532 provision contemplates that the rights of every person in respect of land held by him in the Madhya Bharat region i.e. area of erstwhile Gwalior and Holkar as a Pakka tenant or as a Muafidar, Inamdar or Con- cessional holder shall be protected as Bhumiswami. The priest does not fall in any of the clauses as mentioned in Section 158(1)(b) of the Code. The maufi was granted to the property of temples from payment of land revenue. Such maufi was not granted to a manager. Even Inam granted by the Jagirdar or the ruler to a priest is only to manage the property of the temple and not confer ownership right on the priest. Therefore, in view of the judgment in Pancham Singh and also of this Court in Kanchaniya, the priest cannot be treated to be either a Muafidar or Inamdar in terms of Madhya Bharat Land Revenue and Ten- ancy Act, Samvat 2007 (Act No. 66 of 1950) or in terms of Gwalior Act. Since the priest cannot be treated to be Bhumiswami, they have no right which could be protected under any of the provisions of the Code.

25. Another question which arises is whether the State Government by way of executive instructions can order the deletion of name of Pujari from the revenue record and/or to insert the name of a Collector as manager of the temple. In Ghanshyamdas II, it was held that even if temple was being managed by the Pujari, his name is required to be mentioned as Pujari along with name of deity. We do not find any man- date in any of the judgments to hold that the name of Pujari or man-

ager is required to be mentioned in the revenue record.

26. In terms of Section 108, 109 and 110 of the Code, Rules had been framed initially as Appendix X. Form A has been prescribed as per Rule

2. Later such Rules were substituted by another Rules published on 15.5.1964 and Form I was prescribed to maintain the records of the rights. Such Rules have been further substituted on 20 th December 1983, published in the Madhya Pradesh Gazette. The Column 3 of such Form is to contain name and address of the occupier, whereas Column 4 is required to contain name of the tenant or sub-lessee of an occu- pancy tenant of the Bhumiswami. Column 12 is meant for remarks. The relevant Rules read as under:-

Part II – KHASRA.

> "6. The Patwari shall prepare each agricultural year a khasra for each village that has been completely surveyed in his circle in Form I.
>
> 7. The khasra shall be written up in the field by the Patwari af-

ter local enquiry and actual inspections. A separate entry shall be made for every plot, and every plot, whether cultivated or not shall be entered.

Provided that small baris situated within the village side and included in the village abadi plot, shall not be shown separately but included in the abadi area.

8. Entries shall be made by the Patwari according to facts found by him during local inspection.

9. (a) A fresh volume of the khasra shall be prepared every fifth year, in Form I. The Patwari shall enter each agricultural year the changes that have occurred in the columns provided for the purpose:

> Provided that the Collector in his discretion may or- der a fresh volume of the khasra in any village to be prepared at an interval shorter than five years.
>
> (b) The Collector shall prepare a roster and arrange the preparation of the first Khasra after settlement, so that the preparation of all the khasras in a circle shall not fall due in one and the same year."
>
> 27. In the ownership column, the name of the deity alone is required to be mentioned, as the deity being a juristic person is the owner of the land.

The occupation of the land is also by the deity which is carried out by the servant or the managers on behalf of the deity. Therefore, the name of the manager or that of the priest is not required to be men- tioned in the column of occupier as well. In Ghanshyamdas II, it was held that if the name of the Pujari is recorded in the column No. 12 i.e. column of remarks, it will not affect the rights of the Pujari so long as he is performing his functions properly and cultivating the land or get- ting the land cultivated through servants. Therefore, the name of the Pujari cannot be mandated to be recorded either in the column of own- ership or occupancy but may be recorded in the remark's column.

28. No rule has been brought to the notice that the name of the manager has to be recorded in the land records. In the absence of any prohibi- tion either in the statute or in the rules, the executive instruction can be issued to supplement the statute and the rules framed thereunder.

Such instructions do not contravene any of the provisions of the Code or the rules. Therefore, they cannot be said to be illegal or in excess of the authority vested in the State Government.

29. However, we find that the name of the Collector as manager cannot be recorded in respect of property vested in the deity as the Collector can- not be a manager of all temples unless it is a temple

vested with the State. Still further, this Court in a judgment reported as Deoki Nandan v. Murlidhar and Ors.12 has drawn the distinction between a public and a private temple. This Court held as under:

> "4. The question that arises for decision in this appeal whether the Thakurdwara of Sri Radhakrishnaji at Bhadesia is a public endowment or a private one is one of mixed law and fact. In Lakshmidhar Misra v. Ranga Lal [(1949) LR 76 IA 271] in which the question was whether certain lands had been dedicated as cremation ground, it was observed by the Privy Council that it was "essentially a mixed question of law and fact", and that while the findings of fact of the lower appellate court must be ac- cepted as binding, its "actual conclusion that there has been a dedication or lost grant is more properly regarded as a proposi- tion of law derived from those facts than as a finding of fact it- self". In the present case, it was admitted that there was a for- mal dedication; and the controversy is only as to the scope of the dedication, and that is also a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and a private endowment to the facts found, and that is open to consideration in this appeal.
>
> xx xx xx

12 AIR 1957 SC 133

> 7. When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

In the light of these principles, we must examine the facts of this case. The materials bearing on the question whether the Thakurdwara is a public temple or a private one may be considered under four heads: (1) the will of Sheo-Ghulam, Exhibit A-1, (2) user of the temple by the public, (3) ceremonies relating to the dedication of the Thakurdwara and the installation of the idol with special reference to Sankcalpa and Uthsarga and (4) other facts relating to the character of the temple."

30. Another argument was raised that such circulars of the State Govern-

ment shall be applicable to the public temples and not to the private temples. A bare reading of the circulars does not make out such dis- tinction. However, a temple in a house or which is not open to the pub- lic cannot be treated to be a public temple. However, it will be a ques- tion in each case whether it is a public temple or a private temple which can be decided in the appropriate proceedings. For the purpose of the present appeal, we find that the circular is applicable to all temples unless a particular temple is able to satisfy the competent forum of it being a private temple.

31. In view of the above observations and discussions, the order of the High Court cannot be sustained. The Circulars dated 21.3.1994 and 7.6.2008 cannot be said to be illegal in any manner. The Writ petition is thus dismissed and the appeal is allowed.

.....J. (HEMANT GUPTA) .....J. (A.S. BOPANNA)
NEW DELHI;

SEPTEMBER 6, 2021.