manupatra®

MANU/BH/0040/1985

Equivalent Citation: AIR1985Pat129, 1985(33)BLJR254, 1985()PLJR235

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Writ Jurn. Case No. 319 of 1977

Decided On: 10.12.1984

Appellants: **Dhansukh Giri and Ors.**
Vs.
Respondent: **State of Bihar and Ors.**

Hon'ble Judges/Coram:
S.S. Sandhawalia , C.J., H.L. Agarwal and S.K. Jha , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: K.D. Chatterjee, Awadh Kishore Prasad and Binod Kumar Singh, Advs.

For Respondents/Defendant: Ram Balak Mahto, Addl. Adv. General and S. Rafat Alam, Adv.

JUDGMENT

S.S. Sandhawalia, C.J.

1. The inherent limitations of the Writ Court to enter into the thicket of concurrent findings of fact is yet again the salient issue which has come to the fore in this case, referred for decision to the Full Bench. Equally at issue is the applicability or otherwise of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, to agricultural land, owned by Hindu religious Maths.

2. The writ petitioner, Mahanth Dhansukh Giri, is the Mahanth of the Bodh Gaya Math, and it is averred that he is the common shebait of the seventeen deities on whose behalf this application is made. Admittedly, the Bodh Gaya Math is an old and renounced institution in the region, owning more than 2000 acres of agricultural land in the district of Gaya. On the petitioner's own showing, the then Mahanth, Shree Krishna Dayal Giri, executed a deed of trust dated the 13th of February, 1932 (vide Annexure 11). This deed did not, admittedly, mention any of the deities at all Thereby the Mahanth divested himself of the management and set up a Board of Trustees for the management of the trust properties. It is, however, sought to be denied that this deed created any trust. It is averred that the said deed (Annexure 11) was subsequently cancelled by a registered deed dated the 19th of September, 1935, and, it was the Mahanth aforesaid who continued to manage all the properties and the trust deed was not given effect to. Later, the then Mahanth Harihar Giri of the Math instituted Title Suit No. 129 of 1953, claiming the entire properties as his personal properties', which, as an extremely exceptional case, was transferred to, and, tried by this High Court itself. By its judgment dated the 12th of March, 1955, the Court dismissed the suit holding that the properties were impressed with a public trust. Against the said decision of this High Court, Mahanth Harihar Giri filed Civil Appeal No. 484 of 1957 before the Supreme Court of India, which was later settled by a compromise decree granted by their Lordships on the 9th of September, 1957.

Thereby the properties mentioned in Schedule I to the said compromise petition were held to be endowed properties of the Math, Bodh Gaya, of which the appellant was the Mahanth and were burdened with a trust of the religious and charitable nature whilst the properties mentioned in schedule II thereto were held to be the personal properties of the appellant,

3. It is then averred that since the 17 deities were under the management of a common shebait, namely, Nigmal petitioner and his predecessor Mahanths, there was no division of the properties betwixt them till the year 1970. However, in the said year the permission of the Board of Religious Trust was sought for the proposed arrangement of the division of the properties which was legitimately beneficial to the deities and sanction to execute a deed was obtained. Accordingly, a deed of arrangement dated the 20th of January, 1970 (annexure 12) was executed by the original petitioner, the then Mahanth Shri Shatanand Giri (since deceased), and the properties were carved out in seventeen schedules respectively allotted to the seventeen deities. It is the case that each of the 17 deities being a juristic person could hold land within the ceiling area prescribed even though the properties were not divided between them. It is averred that in making such arrangement there was no intention of defeating any provision of law including the ceiling laws.

4. The original writ petitioner, in his capacity as she bait of the aforesaid 17 deities, thereafter filed 17 returns under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter called the 'Act'). On the 3rd of August, 1971 Shri A. K. Banerjee, the then Additional Collector, Gaya, passed orders finding that the deities were not left with any surplus land and proceeded to make a recommendation to the Government to grant exemption from the operation of section 5 of the Act (vide annexure 1). However, the Government (vide annexure 2) conveyed its decision to the Collector to the effect that the alleged deed of arrangement (annexure 12) dated the 20th of January, 1970 being neither a gift nor a deed of transfer must be ignored and Shri Mahanth Krishna Dayal Giri's trust was the sole owner of the properties in question and was, therefore, entitled to only one unit under the ceiling law. In accordance with the said decision, the matter went back to the Collector for the purpose of an enquiry under Rule 9 of the Rules framed under the Act in relation to the proposal for exemption under Section 29. Shri B. B. Lal, the then Collector of Gaya, passed the order (annexure 3) holding that the trust deed of 1932 created a single trust and did not even mention the 17 deities, and that the properties were owned by the K.D.G. (Krishna Dayal Giri) trust, which was the single land-holder under Section 2(g) of the Act. On or about the 23rd of July. 1975, the original petitioner (since deceased) received a draft statement under Section 10(2) of the Act showing the entire lands as being held by the said petitioner as a trustee and also showing the land exempted by the Government under Section 29 under two notifications dated the 7th of July, 1975, whereby 75 acres of land were exempted under Section 29(2)(a)(ii) and Section 29(1)(b)(v) from the operation of section 5 of the Act. The writ petitioner, Shri Mahanth Shatanand Giri (since deceased) was further allowed to retain 25 acres of land, and thus the draft publication permitted 100 acres of land to be retained and declared about 1896.661/4 acres as surplus.

5. The original petitioner then filed objections under Section 10(3) of the Act which, in substance, was rejected by the Collector of Gaya (vide annexure 6) by his order dated 15th of January, 1976- Aggrieved thereby the said writ petitioner filed Ceiling Appeal No. 40 of 1976 before the Commissioner, Patna, which was also rejected by his order dated the 9th of July, 1976 (annexure 7). Against the said order, the petitioner filed Revision No. 1117 of 1976 before the Board of Revenue but the

learned Additional Member, Board of Revenue, disposed of the revision petition by his order dated the 12th of January, 1977 (annexure 8), rejecting the writ petitioner's stand that the agricultural lands belonged to 17 deities but merely remanded the matter on the incidental question of exemption of more land and the exercise of option to select land to be retained, etc.

6. The primary grievance of the writ petitioners is that all the authorities below have erred in concluding that the properties belonged to the trust and not to the 17 idols. The case now sought to be set up is that the properties in question were endowed by charitably disposed persons centuries ago and the origin of these endowments is lost in antiquity, though admittedly no document creating any of these ancient endowments was available. It is averred that annexure 9, which is a document in Urdu executed by the then Mahanth in the year 1853, provides some evidence of these endowments. Reliance is also sought to be placed on another old document (annexure 10) to indicate that the properties mentioned therein covering about 276 bighas were granted to the deities. It is also averred that these documents have been wrongly discarded and rejected by the concurrent orders of the authorities below. The writ petitioners, consequently, seek the quashing of annexures 6, 7 and 8 containing orders concurrently passed by the ceiling authorities.

7. In the counter-affidavit filed by Ram Swarath Singh, Executive Magistrate, Gaya, the stand of the writ petitioners has been stoutly controverted. It is reiterated that the properties belong to a single trust and it is highlighted that the trust deed dated the 13th February, 1932 (annexure 11) executed by the Mahanth himself did not even remotely make any mention of the alleged 17 deities. The factum of the orders passed by the ceiling authorities is admitted, but the alleged infirmities therein are stoutly denied. It is pointed out that no such document being the registered deed of the 19th September, 1935 cancelling the earlier deed has been produced and further that according to the terms and conditions of annexure 11 the Mahanth was not authorised to cancel the original deed of 1932 at all. The filing of Title Suit No. 23 of 1951 by the then Mahanth Harihar Giri and its trial and dismissal" by the High Court are admitted as also the subsequent compromise in the appeal preferred against the same before the Supreme Court. It is highlighted therefrom that the entire landed properties belonging to the Bodh Gaya Math fell into two categories -- (i) consisting of the endowed properties of the trust alone and (ii), the personal properties of the Mahanth Harihar Giri. It is the firm stand that the present case relates to the endowed properties of the trust. It is then the firm stance that the deed of arrangement of 20th of January, 1970 (Annexure 12) is neither a gift nor a deed of transfer for valuable consideration and had been executed only with a view to defeat the provisions of the Ceiling Act. It is pointed out that the revenue entry procured after the 9th of September, 1970 or the rent receipts etc., later secured cannot confer any title in favour of the deities. It is highlighted that there is not the least mention of any deity in the compromise petition filed before the Supreme Court in Civil Appeal No. 484 of 1957 and the said compromise petition recognised only one trust which was created by the registered deed of 13th of February, 1932. It is the firm stand that the Ceiling Act is applicable to trusts. Lastly, it is averred that if the petitioners consider that the area allowed to be exempted under Section 29 is inadequate then it is open to them to approach the Government for exemption of more lands and the extension of the period of exemption.

8. It is manifest from the rival pleadings and equally from the substratum of the arguments of the learned counsel of the parties that the core question herein is as to what is the true nature of the well-known institution of the Bodh Gaya Math --

whether it is a Hindu religious math and consequently all its properties are impressed with a trust of that nature? That being so, the primal stand of the learned Additional Advocate General Mr. Ram Balak Mahto on behalf of the respondent State is that this issue stands concluded by the concurrent findings of fact which are sacrosanct in the writ jurisdiction. On the other hand, Mr. K. D. Chatterji, learned counsel for the petitioners, was equally forceful in assailing the consistent findings of the authorities below and even seeking re-appraisal of the evidence and consideration of additional evidence as well.

9. Now the bedrock of the respondents' stand herein is first on the High Court's judgment in Title Suit No. 129 of 1953 (Mahanth Harihar Giri v. State of Bihar) decided on the 12th of March, 1955. It is the admitted position before us that the disputed properties herein along with all other properties of the Bodh Gaya Math were the subject matter of the said title suit wherein the plaintiff Mahanth Harihar Giri had claimed them as his personal and separate properties. There is no dispute that the basic lis in the said title suit betwixt Mahanth Harihar Giri on one side and the respondent Estate and the Religious Trust Board on the other was as to what was the nature of the property of the institution known as Bodh Gaya Math. That the issue was considered to be of great significance is evident from the fact that this was one of the rarest of the rare cases which was transferred for trial by the High Court on the original side though it does not ordinarily exercise such jurisdiction. The matter was fought tooth and nail betwixt the parties and squarely put in issue. Massive evidence was led on either side under the stewardship of eminent counsel late Mr. P. B. Das representing the plaintiff and equally the eminent Advocate General representing the defendants. The exhaustive judgment of the High Court running into nearly seventy pages rendered by Mr. Justice Ramaswami (as the learned Chief Justice then was) indeed is the locus classicus on the matter. Tracing the labyrinth of the history of this institution it was noticed that the original grant to it went as far back as the year 1615 when the Mogul Emperor granted Badshahi Sanad to the Math. This was followed later by two Zamiridari Sanads by the East India Company which were again granted to the said Math. On the basis of these primal documents and the surrounding circumstances and after consideration of the mass of evidence the High Court unreservedly held that the nucleus of the property was originally furnished by the said Sanads, (being Exhibits 4, 4(a), 4(c) and 4(d), on the said record) and all subsequent acquisitions to the math property were merely accretions to the said nucleus. Equally categoric finding arrived at was that the nature of the property was a math or a monastery with a Mahanth in terms managing the same in trust. Though this was held to be conclusive it was further found that even if this were to be wrong, the subsequent document of trust deed executed in 1932 by the incumbent Mahanth himself would leave no manner of doubt that the institution was in every sense a Hindu math or a monastery with all the legal incidents thereof in sharp contrast to any other institution. The relevant findings of the High Court cannot but be noticed in extenso :

> "I think that as a matter of construction the two Badashahi sandas should be taken to be grants of land to Lal Gir Sanyasi impressed with a charitable trust. This conclusion is supported by an examination of two zamindari sanads (ext. 4/c) printed at page 6 of Exhibit 1.
>
> * * *
>
> In the present case I am satisfied that the grants of land to Lal Gir Sanyasi were made for the object of Sadabarat or feeding itinerant faqirs and it is not

correct to say that there was a mere expectation or motive on the part of the donor".

* * *

The trust deed, therefore, shows almost in a conclusive manner that the villages covered by the original sanads were treated as properties belonging to the math and that they were impressed with a charitable trust.

* * *

I have now reviewed the evidence as regards the subsequent conduct of the parties and the usage of the properties. The evidence proves beyond any shadow of doubt that the properties conveyed by the Badshahi and the Zamindari sanads were treated as the properties of the Math by Mahanth Sheo Gir and by Mahanth Krishna Dayal Gir. The evidence also shows that the British Authorities treated the villages in question as properties granted to the Bodh Gaya Math and as properties impressed with religious and charitable trust. There is also unimpeachable evidence that all the Mahanths from Lal Gir right down to the present day appropriated the usufruct of the land in Sadabarat, in distribution of alms to wayfarers and feeding the Gossains and for other benevolent purposes. In my opinion, the evidence of subsequent usage given on behalf of the plaintiff cannot be relied upon. I accept the evidence given on behalf of the defendants and hold that the subsequent conduct of the parties and the usage of the institution support the view that the Badshahi and the Zamindari Sanads were grants made to Lal Gir Sanyasi as head of the monastery for charitable purposes.

* * *

Upon the analysis of the oral and documentary evidence produced by both the parties I have reached the conclusion that Mahanth Harihar Gir was installed and the chadar ceremony was performed on the 13th of February 1932 and not on the 11th February 1932. I also find that the trust deed Ext. 23 executed by Mahanth Krishna Dayal Gir is a valid document and that it was acted upon. I have already held that Badshahi and Zamindari sanads when construed in the light of the usage and the conduct of the parties are really grants of properties to the monastery of Bodh Gaya and that a charitable trust was stamped upon the properties. It is clear that the case of the plaintiff must fail upon this finding alone. If, however, I am wrong in my view as to the construction of the sanads the plaintiff must also fail on the alternative case set up by the defendants. The plaintiff must fail because Mahanth Krishnadayal Gir executed a valid trust deed on the 13th of February 1934 on which date Mahanth Harihar Gir was installed. The deed of the trust (Ext.22) executed by Mahanth Krishna Dayal Gir is an irrevocable document and the deed of cancellation (Ext.24) executed on the 19th of September, 1935, has, therefore, no legal effect".

It was on the aforesaid categoric findings that the suit of the plaintiff Mahanth Harihar Giri was dismissed with costs.

10. It is further significant that the matter was then carried to the Supreme Court in Civil Appeal No. 484 of 1967 by the plaintiff appellant aforesaid. However before their Lordships an amicable compromise was arrived at broadly in line with the

judgment of the High Court and a decree was passed in accordance therewith. The order again deserves notice in extenso:

> "WHEREAS UPON counsel for the appellant filing in the Registry of this Court on the 24th April, 1957, a compromise petition duly signed by Counsel for the appellant and Counsel for the respondents, the matter was placed for orders before the Court on the 6th day of May, 1957 when the Court adjourned the matter sine the and also directed the Advocate for the appellant to file the petition of appeal AND UPON Counsel for the appellant filing the said petition of appeal in the Registry of this Court on the 6th day of May, 1957, and the matter being called on for recording compromise before this Court on the 9th day of September, 1957, Upon perusing the said Memorandum of Compromise and upon hearing Counsel on both sides this Court doth order that the said compromise appended hereto as Annexure 'A' be and the same is hereby recorded AND THIS COURT (torn) terms therefore and in substitution of the judgment and decree dated the 18th March, 1955 passed by the Patna High Court in Title Suit No. 129 of 1953 by and with the consent of the parties DOTH DECLARE, ORDER AND DECREE:-
>
> > (1) Thai the properties mentioned in schedule I to the said compromise petition appended hereto as Annexure 'A' are endowed properties of Math Bodh Gaya of which the appellant herein is the Mahanth and are burdened with a trust of religious and charitable nature."

Now it is the common and indeed the admitted ground before us that the properties mentioned in Schedule I of the said compromise decree are identical with the subject matter of the later land ceiling proceedings and what is now before us. Thus the land which is the subject matter in the present writ petition is the same land which has been finally held to be the endowed property of the Bodh Gaya Math and is burdened with a trust of religious and charitable nature. It is equally the admitted position before us that nothing has happened subsequent to the decree of the Supreme Court on the 9th September, 1957, which could possibly alter the nature of the hallowed institution of the Math or the properties endowed thereto. In a way the seal of the final Court on the matter is conclusive.

11. However, the matter does not merely rest there and with the advent of land c.eiling legislation it was sought to be raked up and reagitated in the forums under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. This had a somewhat chequered history, every detail whereof is not necessary to be referred to laboriously. It suffices to mention that after the preliminary proceedings the matter was first decided by Shri B. B. Lal, the Collector of Gaya, vide Annexure '3'. By an exhaustive and lucid order running into 20 pages, in which he appraised all relevant evidence produced and dealt with every conceivable argument raised on behalf of the petitioner, he concluded as under : "My findings are as follows :

> (a) The original trust deed executed in 1932 does not make any mention of the 17 deities and mentions only one and single trust. The argument that the 17 deities have separate establishment and separate management does not hold good.
>
> * * * *

Thus in accordance with sections 4 and 5 the trust is entitled to only one ceiling and not 17 as claimed by the respondent."

An appeal against the order of the Collector was then taken to the Commissioner. In an equally detailed order the learned Commissioner considered the matter in depth with particular reference to the main issue raised before him that the alleged 17 deities were individual land-holders and thus entitled to their permissible area accordingly. In no uncertain terms the Commissioner agreed and affirmed the findings of the Collector. Aggrieved thereby the petitioners preferred a revision before the Board of Revenue. The learned Additional Member, with meticulous detail, dealt with the issues raised before him exhaustively. On the main point he concluded as under :

"The first point to be determined is whether the properties belong to the Trust or to the Idols. I have perused the documents referred to on behalf of the petitioners in support of their contention that the properties belong to the deities. The document of 1853 is in Urdu but from the Hindi rendering of the Deed reproduced in the Paper Book submitted before this Court, it would appear that this document contained some instructions to the Chela by the then Mahanth who was going on pilgrimage regarding arrangements to be made for the temples etc., in his absence. In this document there is a passing mention that whatever property existed then belonged to the deities mentioned in the document. From the letter of 1881 (1288 Fasli) it appears that a little more than 276 bighas of land were given by Raja of Tekari for Ragbhog etc. of the 17 deities. Whatever might have been the position in 1853 or even in 1881, one fact is clear that a Trust known as Mahanth Shri Krishna Dayal Giri Trust was created on 13-2-1932 in terms of which all properties were vested in the Board of the Trustees after divesting the Mahanth of his authority over these. According to this deed, neither the Trustees nor even the Board of Trustees was authorised to transfer any property except on Thika up to a maximum period of nine years. The Trust Deed executed in 1932 does not make any mention of the separate entity of the 17 deities but mentions only one single Trust. This Trust Deed has continued to be acted upon and has not been challenged by anybody and must be held to be in operation even now in spite of the Deed of Arrangement of 20-1-1970 which is admittedly an internal arrangement for the upkeep of the separate deities. It is also significant to note that this Deed of Arrangement has been signed by Mahanth Satanand Giri as Executant (and not by the Trustee) and again by himself on behalf of the deities. It is also significant that no authorisation for executing even this Deed of Arrangement appears to have been given by the Board of Trustees. The contention of the learned State Counsel that this arrangement was made with a view to escaping the provisions of the Ceiling law cannot be easily dismissed. In view of what has been mentioned above, the Trust and not the 17 idols must be held to be the owners of the property and must be held to be the land-holders for the purposes of the Act. Considering the above facts, the contention of the petitioner on this point must fail. The simple fact of mutation of their names and that also after 9-9-1970 does not create any title in favour of the deities because the Deed of Arrangement could not and did not transfer any property in favour of these deities."

12. To sum up on this aspect it seems manifest that way back in 1955 this High Court in Title Suit No. 129 of 1953 (Mahanth Harihar Giri v. State of Bihar) held in

unequivocal terms that the institution at Bodh Gaya was a math or a monastery with a Mahanth in terms managing the same and the properties thereof were burdened with a trust of religious and charitable nature. That finding received the seal of approval of the final Court in the compromise decree granted by their Lordships of the Supreme Court. Thereafter the Collector of the District on an appraisal of all the relevant evidence had come to the conclusion that the Bodh Gaya Math was a trust and thus entitled to only one ceiling and the claim that there were 17 deities all individually entitled to hold permissible area was said to be one to avoid the ceiling laws. Those findings were affirmed by the Commissioner in a considered order. This in terms was upheld by the Board of Revenue, which even in the revisional jurisdiction examined the matter in great depth. It must, therefore, inevitably be held that the institution at Bodh Gaya is a Hindu religious Math and consequently all its properties are impressed and burdened with a trust of the said religious and charitable nature.

13. In the light of the above what deserves highlighting is the fact that the issue herein has not to be considered as if it was a matter of trial in a suit. Nor can it be examined as if it was an appeal against the forums under the ceiling law. It necessarily has to be considered within the parameters of the writ jurisdiction. It was pointed out by learned counsel for the respondents and in my view rightly that the issue as to what is the true nature of a particular institution is in ultimate essence a finding of fact to be arrived at on the basis of the relevant evidence adduced. That being so, it was virtually the admitted position that the present case cannot even remotely be suggested as a case of no evidence where perhaps the writ Court may be inclined to disturb the findings of fact. Equally well-settled it is that the sufficiency or credibility of evidence is not an issue in this forum. Consequently the consistent and concurrent findings of the Collector, the Commissioner and ultimately of the Board of Revenue must be treated as sacrosanct. This is now so well-settled that it seems unnecessary to multiply authorities on the point. In the celebrated case of Hari Vishnu Kamath v. Ahmed Ishaque MANU/SC/0095/1954 : AIR 1955 SC 233 the law was enunciated in the following categoric terms by Venkatarama Ayyar, J. :

> "One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and, when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in 'certiorari'. These propositions are well settled and are not in dispute."

The aforesaid enunciation has been adhered to unreservedly in Union of India v. T. R. Verma AIR 1937 SC 382, Syed Yakoob v. K. S. Radhakrishnan MANU/SC/0184/1963 : AIR 1964 SC 477 and State of Madras v. G. Sundaram MANU/SC/0349/1964 : AIR 1965 SC 1103.

14. Respectfully following the binding mandate aforesaid, it is manifest that the factual aspect herein thus stands concluded by the consistent and concurrent findings of as many as four forums and within the writ jurisdiction there is no warrant at all for taking any contrary view.

15. In view of the above, hardly any other argument survives in this specific context. However, as one fine exception, and, in fairness to Mr. K. D. Chatterjee, the learned

Counsel for the petitioner, one must briefly notice his ingenious attempt to set up altogether new case to bring it within the well known concept of a lost grant. Relying on Annexures 10 and 11, it was suggested that the origin of the endowment in favour of the deities was lost in antiquity, but the aforesaid documents could be a pointer that the properties of the Math were vested in the deities. Particular reference was made to the recitals in Annexure 9, which purports to be of the year 1853, and those in Annexure 10 which is allegedly of the year 1853, to say that the properties belonged to separate deities. It was argued that if the deities or idols were originally endowed with properties in the hoary past, then the Shebait or the Mahanth could not change the character of the said properties by either creating a trust deed or any other mode. It was his stand that properties once vested in the deities cannot be diverted by the act of the Shebait or of the Mahanth, because the same would plainly be an act of bad management.

16. The aforesaid contention might bring some credit to the ingenuity of the learned Counsel for the petitioner, but the same is, nevertheless wholly untenable on the present record. The finding of this High Court in the earlier title suit and the decree of the Supreme Court establish conclusively that the properties in question belong to a Math, namely, the Bodh Gaya Math, and not to any deity or deities. The true origin of the endowments and the proof of title was not only forthcoming but was actually and designedly produced on the record to convincingly prove the nature of the grant. That being so the petitioner's plea that the origin of the endowment is lost in antiquity has no legs to stand upon. Consequently, the principles governing the case of a lost grant are not even remotely attracted. The High Court in the title suit had come to the firm finding that the origin of the endowment and the proof of title was rested on two Badshahi Sanads and the two Zamindari Sanads, expressly granted to the Bodh Gaya Math. These four Sanads are of the years 1717, 1737, 1733 and 1762. The High Court had unequivocally held that all acquisitions made thereafter were from the nucleus of the said properties, and, therefore, the properties in question either formed part of the aforesaid two Badshahi grants and the two Zamindari Sanads or made through the nucleus of the properties covered by the original Sanads. On the petitioner's own showing, Annexure 9 is of the year 1853, and the Sanads are plainly anterior thereto by a century or more. Consequently, the properties having been conclusively held as the properties of the Math or the monastery of Bodh Gaya even in the 18th century could not in the year 1853 become the properties endowed or dedicated to the deities. Secondly, Annexure 9, which purports to contain the desire of the then Mahanth, actually describes him to be the Mahanth of Bodh Gaya Math. Thus, admittedly he is the Mahanth and the institution is a Math, of which he has the vested right to manage for the purposes for which the Math was created or dedicated. The mere mentioning of deities therein is thus of no consequence. No evidence whatsoever has admittedly been led with regard to any dedication of properties to any one of the 17 deities individually. Equally, there is no evidence of the usage and the conduct of the parties that the alleged deed (Annexure 9) was ever acted upon. On the contrary, there is voluminous evidence which was duly considered by the High Court in Title Suit No. 129 of 1953, and of a period prior to 1853, and equally of periods after 1853 up to the date of the filing of the suit in 1953, and, in consideration of all those materials and also of the conduct of the parties and usages relating to the properties, it has been conclusively held that the properties were originally endowed and dedicated to the Math.

17. I must also notice that in assailing the freshly floated theory of a lost grant, Mr. Ram Balak Mahato, learned Additional Advocate General, has rightly pointed out that this could arise only if the original document or endowment is lost in antiquity and is

not forthcoming. It is pointed out that herein the position indeed is in the reverse. The four Sanads [Exhibits 4, 4(a), 4(c) and 4(d)] in the title suit were not only available to the Mahanth, but were, in fact, produced, proved and relied upon, and these documents are anterior in time to the year 1853, to which Annexure 9 purports to belong. It was argued with plausibility that the writ petitioner cannot launch on a theory of the lost grant by suppressing either the earlier documents or the alleged endowments and now take the advantage of his own wrong.

18. Now specifically assailing Annexure 9, it was pointed out that this document does not provide the least evidence of any consecration of private property to the deities. It was highlighted that in fact far from any property being specified, indeed none had even been referred to therein. Consequently, the very basic ingredients of a valid consecration of a private property to a deity were altogether lacking. There was no owner, who had divested himself of the property and vested it by consecration to a specific idol. In Annexure 9 the deity in whose favour the same is expressly consecrated is not even named. No line of succession to the property had been laid out. It does not even remotely appear as to who is the donor. In such a situation, therefore, the will of the original donor will prevail and the fiduciary relationship of the Mahanths to the properties of the Math cannot be unilaterally altered by any such purported declaration. The language of Annexure 9 was itself totally equivocal and therein no reference whatsoever exists that the property was already consecrated to the alleged deity from times immemorial or by a document lost in antiquity. In fact, the tenor of the document was that the Mahanth was establishing and building the temples and it seems to be no better than a self-laudatory record of his accomplishments. Equally emphasis was placed on the fact that Annexure 9 was merely a passing desire of a Mahanth going on a pilgrimage, and, perhaps, ensuring that in his absence the properties were not usurped by persons entrusted with their temporary management. Such a document could not possibly change the hoary nature of the properties, endowed to and vested in the institution at Bodh Gaya, which was undoubtedly a Math. Equally, there was not the least evidence that any such document had been acted upon.

19. In the light of the above, it is plain that the concept of a lost grant is not even remotely applicable herein.

20. It is, perhaps, apt to notice as well that the learned Counsel for the petitioner had attempted to assiduously assail the concurrent findings of fact in the case as well. The correctness and the reasoning of the High Court's judgment in Title Suit No. 129 of 1953 was sought to be challenged. It was argued that part of the findings therein were rested on the concession of Mr. P. R. Das, the distinguished learned Counsel for the plaintiff in the said suit. This right concession was now sought to be assailed before us. It was equally suggested that the findings in the title suit were not binding upon the petitioner stricto sensu as the deities themselves were not parties thereto. It was argued that had the document (Annexure 9) been proved on the record, it could not be predicted as to which way the judgment of the High Court might have turned.

21. Lastly, it was the case that the specific contents of the compromise decree in the Supreme Court that Schedule 'A' pertained to the endowed properties of the Bodh Gaya Math, of which the appellant was the Mahanth and these were burdened with a trust of such a religious and charitable nature, was irrelevant to the issue. Similar challenges were also made to the findings arrived at by the Collector, the Commissioner and the Board of Revenue. It suffices to notice that for the reasons

recorded in the earlier part of the judgment, any challenge to the basic issues of fact and the credibility, quantum, and sufficiency, of evidence does not arise for consideration in the writ jurisdiction.

22. I may also notice that ancillary submissions on the premise that the properties herein belonged to the 17 deities, separately and individually, were also sought to be addressed, including the claim that each one of the deities would be thus entitled to a separate unit for the purpose of the ceiling law. Since I have come to the categoric finding, in affirming the consistent and concurrent view of the authorities below, that the institution at Bodh Gaya is a Hindu religious Math and consequently, all its properties are impressed and burdened with a trust of such religious and charitable nature, it seems not only unnecessary but wasteful to advert to those submissions. It is well settled that the High Court does not ordinarily adjudicate upon mere academic issues. Having rejected the premise of the properties belonging to the 17 deities, it is unnecessary to examine the contentions resting on that assumption.

23. It was also argued that considering the antiquity and the importance of the institution of the Bodh Gaya Math, the area of land exempted under section 29 of the Act is totally inadequate. The ancillary submission was that the exemption under the same section, limited to a period of 5 years, is illegal. A reference to the scheme and language of section 29, and, in particular Sub-section (3) thereof, would indicate that the quantum and the period of exemption is primarily for the Government to determine. The same is vested in the reasonable discretion of the State Government and nothing has been brought on this record to indicate that such discretion has either been perversely or arbitrarily exercised. Nevertheless, it is to be hoped that the authorities would examine the claim of the Math under section 29 with the care and consideration which it may deserve.

24. One must now proceed to examine the pristinely legal issues which were sought to be canvassed on behalf of the petitioner. It was submitted that an idol or consecrated deity is outside the purview of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act. Since I have already come to the conclusion that the properties herein do not belong to or are not vested in any deity, the issue does not call for any examination or adjudication.

25. In the alternative it was submitted that if religious endowments or trusts are within the purview of the Act, the same must be held to be violative of Articles 14 and 26 of the Constitution. Specific attack was focussed on Section 2(ee) of the Act, which defines 'family' and Explanations I and II thereunder. It was the case that the Act, in so far as it violates Articles 14 and 26, would not be saved by its inclusion in the Ninth Schedule to the Constitution.

26. I am afraid, it is somewhat too late in the day to raise a challenge to the constitutionality of the ceiling laws in general and the Act in particular. In a series of cases before the Final Court, every conceivable argument against similar or identical provisions have been considered by the Supreme Court and repelled. Recently, in Begulla Bapi Raju v. State of Andhra Pradesh MANU/SC/0284/1983 : AIR 1983 SC 1073, a specific challenge to the definition of family unit' in the Andhra Pradesh Land Reforms (Ceiling in Agricultural Holdings) Act, on the ground of the same being violative of Article 14 of the Constitution was, inter alia, raised and, on an exhaustive consideration, rejected by the Bench. In Sasanka Sekhar Maity v. Union of India MANU/SC/0382/1980 : AIR 1981 SC 522, the concept of family and clubbing together of land holdings of each member of the family under the West Bengal Land Reforms

Act, 1956, was held to be not violative of any constitutional provision. Equally the applicability of the ceiling law to a trust was upheld. Again, in Madhusudan Singh v. Union of India MANU/SC/0291/1983 : AIR 1984 SC 374, the amending provisions of the West Bengal Land Reforms Act were also held as immune from constitutional challenge. Equally well it is to recall that in Dattaraya Govind Mahajan v. State of Maharashtra MANU/SC/0381/1977 : AIR 1977 SC 915 closely similar provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, of the Punjab Land Reforms Act, 1973, and of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1971, were upheld. Earlier, in Hasmukhlal Dahyabhai v. State of Gujarat MANU/SC/0532/1976 : AIR 1976 SC 2316 similar provisions of the Gujarat Agricultural Land Ceiling Act, 1961, were found to be protected within the umbrella of Article 31B of the Constitution. The challenge to the constitutionality of the provisions, therefore, must necessarily fail.

27. To conclude, it must be held that there are inherent limitations in the writ jurisdiction to enter into or disturb the concurrent findings of fact by authorities having jurisdiction to adjudicate thereon, and that section 2(ee) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, does not, in any way suffer from the vice of unconstitutionally and, consequently, the Act is applicable to agricultural lands owned by Hindu religious Maths.

28. In view of the above and in the light of the detailed discussion and rejection of the various contentions raised on behalf of the petitioner, this writ petition must fail and is hereby dismissed. The parties will bear their own costs.

H.L. Agarwal, J.

I entirely agree.

S.K. Jha, J.

I entirely concur in the judgment.

© Manupatra Information Solutions Pvt. Ltd.