

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 3563 of 1992 (O&M)

Reserved on 21.8.2023

Date of Decision: 29.8.2023

Hukam Singh and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Shailendra Jain, Senior Advocate assisted by
Ms. Jaivi Verma, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seek the makings of a writ in the nature of certiorari, thus declaring the provisions of Haryana Shri Mata Sheetla Devi Shrine Act, 1991 (for short 'the Act of 1991) (Annexure P-4), as ultra vires of Articles 14, 25, 26 and 254 of the Constitution of India, and, the provisions of Religious Endowments' Act, 1963. Further, another relief, as asked for in the instant writ petition, is for restraining the respondents from interfering in the affairs of the Shri Mata Sheetla Devi Shrine, and, from dispossessing the alleged proprietors of the said shrine.

2. The instant writ petition has been filed by the petitioners in a representative capacity, on behalf of the proprietors of 12 Biswas and 8 Biswas patti of village Gurgaon. Through the legislative enactment (supra), the Hindu Temple named as Shri Mata Sheetla Devi Temple, also known as

Mata Masani Devi Temple, and, Lalita Mata Temple, has been acquired by the respondent-State.

3. The writ petitioners aver, that the temple (supra) became established more than 400 years ago by late Shri Dada Singha, resident of 8 Biswa, village Gurgaon, and, that the said temple was established in the area of 12 Biswas. The successors-in-interest of the above, are averred to be the proprietors of the temple. The temple is averred to be established on land, which was reserved in the consolidation scheme, thus for the benefit of the village proprietary body. In the above regard, reliance has been placed, upon jamabandi attached to the petition, to which Annexure P-1, is assigned.

4. The income of the temple, as ensuing from the offerings made at the disputed shrine, is averred in the petition, to be distributed amongst all the proprietors of the above biswas. The petitioners aver, that in terms of wazib-ul-arz to which Annexure R3-2/T, is assigned, contents whereof are extracted hereinafter, the proprietors of the apposite pattis, are entitled to divide amongst themselves in proportion to the revenue payable by them, thus the income in the shape of offerings made at the disputed shrine.

“In khasra No. 2158, Mandar Masani is situated in Shamlat Patti named 12 Biswas. The income of the offerings is divided in the first instance in two Pattis in equal share and the owners of each Patti divide the same amongst themselves in proportionate to the revenue payable by them and the income which accrues from the brick kiln situated in Shamlat Patti is 8 Biswas is used for common purposes of Shamlat Patti like repair of Mandar Thakur Duara. There is no income from the remaining Shamlat land.”

5. The petitioners further aver, that by virtue of a verdict drawn by the learned Civil Judge concerned, to which Annexure P-3, is assigned, there

is acceptance of right of the proprietors to share amongst themselves the

income in the shape of offerings made at the disputed shrine. Therefore, it is averred in the petition, that the proprietors or the biswasidars, thus become endowed with vested rights, as owners of the disputed shrine. In sequel, it is further averred in the petition, that the said right of the petitioners, as owner(s) over the shrine, cannot be expropriated, through the challenged enactment, unless compensation became determined qua the petitioners, which however, has not been determined. As such, it is averred that the impugned legislation is arbitrary, and/or, is ultra vires to the provisions as embodied in Article 300-A of the Constitution of India.. It is further averred in the petition, that the impugned enactment also breaches the Constitutional guarantees, as enshrined in Articles 25 and 26 of the Constitution of India, provisions whereof stand extracted hereinafter.

25. Freedom of conscience and free profession, practice and propagation of religion.—

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

26. Freedom to manage religious affairs.—

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

6. The above averment is rested on the plank, that the ownership of the shrine becoming untenably divested from the deity, and, it becoming vested in the Board under Section 4 of the Act of 1991. Moreover, Section 5 of the Act of 1991, which permits the defraying of the income of the shrine for the purposes, other than maintenance of temple, performance of pooja, and, other rituals, and, providing amenities, and, facilities to the visiting devotees, and, pilgrims, thus is contrary to the customs, and, practices relating to the utilization of the income from the shrine. Therefore, it is contended, that the contemplation, as made in Section 5 of the Act of 1991, whereby the income of the shrine has been permitted to be utilized for establishment, and, maintenance of educational institutions, and, for training of vidyarthies, though is a laudable object, but yet is in conflict with the usages and customs relating to the utilizations of the income ensuing from the offerings made to the disputed shrine. The relevant (supra) provisions of the impugned enactment are extracted hereinafter.

4. Constitution of Board.- *The administration, management and governance of the Shrine shall vest in a Board consisting of a Chairman, Vice- Chairman and not more than eleven members.*

The composition of the Board shall be as follows :-

- (a) *Chief Minister, Haryana, shall be the Chairman;*
 - [(aa) Minister-in-charge, Local Government, Haryana, shall be the Vice-Chairman;]*
- (b) *Secretary to Government, Haryana, Local Government Department whether designated as Financial Commissioner,*

Local Government or Commissioner, Local Government, as the case may be, shall be the ex officio member;]

- (c) Deputy Commissioner, Gurgaon, shall be the ex officio Member- Secretary;*
- (d) nine persons to be nominated by the Government as members in the following manner :-*
 - (i) two persons who, in the opinion of the Government have distinguished themselves in the service of Hindu religion or culture;*
 - (ii) two women, who in the opinion of the Government have distinguished themselves in the service of Hindu religion, culture or social work, especially in regard to advancement of women;*
 - (iii) three persons, out of persons who have distinguished themselves in administration, legal affairs or financial matters;*
 - (iv) two eminent Hindus of the State of Haryana.*

5. Defraying of Shrine funds.- *The Shrine funds would be applied, -*

- (a) for defraying expenses for the proper maintenance of the temple, performance of puja and other rituals;*
- (b) for providing amenities, facilities to the visiting devotees;*
- (c) for training of vidyarthies; and*
- (d) for establishment and maintenance of the educational institutions; and*
- (e) for securing the health, safety and convenience of disciples, pilgrims and worshippers visiting the Shrine.”*

Contentions in reply filed to the writ petition by respondent no. 3

7. The above made averments in the writ petition, became contested by respondent No. 3 through the institution of a reply on affidavit. In the preliminary objections, it has been contended, that the purpose of enacting the impugned legislation, is for providing better management, administration, governance of Shri Mata Sheetla Devi Shrine, and, its

endowments including the land, and, building attached or appurtenant to the shrine, as also to provide better amenities, and, facilities to the visiting devotees as well as securing the health, safety and convenience of the disciples, pilgrims, and, worshipers of the shrine. It is further averred therein, that in the judgment of the Civil Court concerned, (Annexure P-3), upon which the petitioners have placed reliance, it is not manifested that the petitioners or their predecessors are the proprietors of the shrine. It is also contended therein, that there was no question of any public trust involved therein, rather the question involved therein was relating to the distribution of the shares. Furthermore, it is contended, that after coming into force of the Act (supra), the properties of the shrine vest in the Board, and, that in the jamabandi relating to the writ lands, and, as appertaining to the year 1986-87, therein occurs a reflection, that the petition lands are Shamlat Patti 12 Biswas Hasab Rasad Kabza land. Therefore, it is contended, that the ownership of the writ lands vests in the shamlat patti.

8. It is also contended therein, that in the jamabandi(s) relating to the writ lands, and, to which respectively Annexure R3/4-T, Annexure R3/5-T, Annexure R3/6-T, and, Annexure R3/7-T, are assigned, the writ lands whereons the shrine exists, has been declared to be the benefit of the general public or is reflected to be for the benefit of the general public (rafai-aam). Resultantly, it is contended, that the shrine was a public trust, and/or is infused thus with the rubric of *animus dedicandi*. Therefore, it is contended that the petitioners are not either proprietors nor private trustees of a private trust, nor thereby the petitioners are entitled to assert any right as owner thereons. On the other hand, it is contended, that the shrine being infused with the rubric of *animus dedicandi*, thereby since the enactment has been

worshippers, so as to ensure the purveying for them of better management or facilities. Therefore, no right, title or interest inheres in the petitioners to contend, that the impugned legislation is expropriatory, inasmuch as, without determination of compensation in their favour, thus breach being caused to the right of property, as becomes enshrined in Article 300-A of the Constitution of India, nor thereby it is contended that the impugned legislation deserves to be declared as ultra vires. It is further contended, that since the disputed shrine is invested with an element of *animus dedicandi*, therefore, it is neither a private *Matth*, nor the purported owner of the temple, who belong to the Hindu denomination, thus can claim, that the Constitutional guarantees, as enshrined in Articles 25 and 26 of the Constitution of India, relating to investment in the religious denomination concerned, thus fundamental rights to establish, and, maintain the institution for religious and charitable purposes, and, to own and acquire the movable, and, immovable properties, besides administer them, in accordance with law, rather do become breached. On the other hand, it is submitted that since the enactment contemplates, that no person other than a Hindu, shall be eligible to be nominated in the governing body concerned, thereby also the character of the shrine but as a Hindu temple, would not become affected at all.

Submissions of the learned senior counsel for the petitioners

9. The learned senior counsel for the petitioners submits, that since the biswasidars, who are the petitioners, are also pannedars of the lands, on which the disputed shrine is located. Therefore, he argues, that since clause 2(g)(5)(ix) of the Haryana Village Common Lands (Regulation) Act, 1961, provision whereof becomes extracted hereinafter, excludes from the definition of shamlat land, any land which was being used as a place of worship or for the purposes, subservient thereto, immediately before the

commencement of the said Act.

“(ix) is used as a place of worship or for the purposes, subservient thereto, immediately before the commencement of this Act”

10. Resultantly, he argues, that since the disputed shrine has been uncontrovertedly established prior to the year 1950, as such, he further argues, that the pannerdars or biswasidars, do thus *ipso facto*, become the owners of the disputed shrine. In sequel, he continues to argue, that the impugned legislation, thus without making provisions for compensation becoming assessed, qua the proprietors of the disputed lands, rather is expropriatory, but on the ground, that it obviously breaches, the mandate as enshrined in Article 300-A of the Constitution of India.

11. The learned senior counsel further argues, that when in terms of Annexure P-3, there is a recognition of the right of the proprietors to, share amongst themselves the income derived from the shrine, besides when the said right is also recognized by the wazib-ul-arz, therefore he contends, that the above made argument, rather does garner fortification therefrom. In making the above address before this Court, the learned senior counsel for the petitioners, has placed reliance, upon, a judgment made by the Constitutional Bench of the Hon’ble Apex Court, in case titled as ***The Commissioner, Hindu Religious Endowments, Madras versus Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***, and, to which ***Civil Appeal No. 38 of 1953***, is assigned, wherein the Hon’ble Apex Court in paragraph 12, para whereof stands extracted hereinafter, has mandated, that the legal incidence of the office of a Mahant, is an incorporeal interest in the Hindu shrine, and, that the Mahantship of a Hindu shrine is, thus entitled to enjoy the property, and, or thus the beneficial interest appertaining thereto,

and, the said Mahantship, and, or the beneficial interest attached thereto,

rather cannot be expropriated. It is also declared therein, that the duties of a Mahant, are not simpliciter to manage the temporal affairs of a Matth or a Hindu shrine, but he is to also to steward the spiritual growth, and, to foster spiritual training by maintenance of a competent line of teachers, who could impart religious instructions to the disciples and followers in the Matth and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents.

“12. There is no reason why the word "property", as used in [article 19\(1\)\(f\)](#) of the Constitution, should not be given a liberal and wide connotation and should not be extended to those well recognised types of interest which have the insignia or characteristics of proprietary right. As said above, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the discharge of his duties would be to destroy his character as a Mahant altogether. It is true that the beneficial interest which he enjoys is appurtenant to his duties as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Matth. He is the head and superior of spiritual fraternity and the purpose of Matth is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to the disciples and followers of the Matth and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Matthadhipati down to the level of a

servant under a State department. It is from this standpoint that the reasonableness of the restrictions should be judged.

12. Furthermore, in paragraphs 17, 18 and 19, paras whereof stand extracted hereinafter, it has been expounded therein, that the constitutional right enshrined in Article 26(b) of the Constitution, as relates to right of any religious denomination, thus to manage its affairs in the matters of religion, embodies, that in terms of the tenets of the religious denomination, the offerings, are to be made to the idol at particular hours of the day, and, that periodical ceremonies, are thus ensured to be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire. It is further declared therein, that all these would be regarded as parts of religion and the mere fact, that they involve expenditure of money or employment of priests and servants or the use of marketable commodities, would not make them secular activities partaking of a commercial or economic character.

“17. It will be seen that besides the right to manage its own affairs in matters of religion which is given by clause (b), the next two clauses of [article 26](#) guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the article applies.

*What then are matters of religion ? The word "religion " has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case- **Vide Davis v. Beason**, (1888) 133 US 333 at P. 342, it has been said"*

that the term religion has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter."

We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon [article 44\(2\)](#) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution-makers when they framed the Constitution.

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else, but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

18. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression " practice of religion " in [article 25](#). Latham C. J. of the High Court of Australia while dealing with the provision of

*section 116 of the Australian Constitution which inter alia forbids the Commonwealth to prohibit the "free exercise of any religion" made the following weighty observations----Vide **Adeliade Company v. The Commonwealth. 67 CLR 116 at P.127:***

" It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinion&, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of [section 116](#). The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts. done in pursuance of religious belief as part of religion."

These observations apply fully to the protection of religion as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under articles 25 and 26 on grounds of public order,. morality and health. Clause (2)(a) of [article 25](#) reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices. The learned Attorney-General lays stress upon clause (2)(a) of the article and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation.

19. The contention formulated in such broad terms cannot, we think, be supported. In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food

should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious. practices and should be regarded as matters of religion within the meaning of [article 26\(b\)](#).

What [article 25\(2\)\(a\)](#) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality, but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices.

We may refer in this connection to a few American and Australian cases, all of which arose out of the activities of persons connected with the religious association known as "Jehova's Witnesses." This association of persons loosely organised throughout Australia, U.S.A. and other countries regard the literal interpretation of the Bible as fundamental to proper religious beliefs. This belief in the supreme Authority of the Bible colours many of their political ideas. They refuse to take oath of allegiance to the king or other Constituted human authority and even to show respect to the national flag, and they decry all wars between nations and all kinds of war activities.

In 1941 a company of " Jehova's Witnesses " incorporated in Australia commenced proclaiming and teaching matters which were prejudicial to war activities and the defence of the Commonwealth and steps were taken against them under the National Security Regulations of the State. The legality of the action of the Government was questioned by

means of a writ petition before the High Court and the High Court held that the action of the Government was justified and that [section 116](#), which guaranteed freedom of religion under the Australian Constitution, was not in any way infringed by the National Security Regulation- 'Vide 67 CLR 16 at p. 127. These were undoubtedly political activities though arising out of religious belief entertained by a particular community. In such cases, as Chief Justice Latham pointed out, the provision for protection of religion was not an absolute protection to be interpreted and applied independently of other provisions of the Constitution. These privileges must be reconciled with the right of the State to employ the sovereign power to ensure peace, security and orderly living without which constitutional guarantee of civil liberty would be a mockery.

13. On the plank of the above expostulation of law, the learned senior counsel has further argued, that since the administration of the disputed shrine, becomes snatched from the proprietors of the said temple, thereby there is a gross breach of the Constitutional mandate, as enshrined in Articles 25 and 26 of the Constitution of India.

14. The learned senior counsel for the petitioners, has further made dependence upon a judgment rendered by the Hon'ble Apex Court in case titled as ***Dr. Subramanian Swamy versus State of Tamil Nadu and others, (2014) 5 Supreme Court Cases 75***, to contend, that the declaration therein of Smarthi Brahmins, thus constituting a religious denomination, therefore the petitioners have an exclusive privilege, and, right to participate in the administration of the properties of the temple concerned, dedicated to Lord Shiva. Therefore, since there is an alike declaration, in the judgment (Annexure P-3) in respect of the petitioners being the proprietors of the disputed Hindu shrine. Resultantly, he argues, that the said declaration is in

rem, and, is not amenable for becoming re-examined in the instant writ

petition. In sequel, he argues, that through the making of the impugned legislation, there is a gross transgression of the said declaration, as embodied in Annexure P-3.

Submissions of the learned State counsel

15. The learned State counsel has vehemently argued before this Court, that in terms of the contest (supra), as raised in the reply on affidavit, furnished to the instant writ petition by co-respondent No. 3, thereby the impugned legislation is, thus required to be vindicated by this Court.

**Reasons for rejecting the submissions of the learned senior
counsel for the petitioners.**

16. For the reasons to be assigned hereinafter, this Court rejects the submissions made before this Court, by the learned senior counsel for the petitioners, whereas, the submissions (supra), as became projected before this Court, by the learned State counsel, are accepted.

17. The gravamen of the arguments, as addressed before this Court, by the learned senior counsel for the petitioners, is hinged upon Annexure P-3, which is a declaratory decree, made by the Civil Judge concerned. Though, therein there occurs an echoing, about the right of the plaintiffs therein, to in the terms of the wazib-ul-arz share amongst themselves, the income in the shape of offerings made at the disputed shrine. However, the said declaratory decree appears to be made, but on an agreement being made by the plaintiffs amongst themselves. Obviously the said decree did not prima facie array therein any defendant(s) so as to ensure the eruption of a contest amongst the plaintiffs, and, the said arrayed defendants, in the civil suit concerned, rather relating to the said claimed declaratory decree, being a sequel of the disputed shrine, rather being a private property of the plaintiffs

or the disputed Hindu shrine being a public trust. Furthermore, obviously in

the wake of non-impleadment of any defendants in the civil suit concerned, no issues in respect of the above became struck, nor any affirmative finding in favour of the plaintiffs rather became returned on the said struck imperative issue(s), thus relating to the disputed shrine being a private trust or being under the exclusive proprietorship of the plaintiffs, and/or the same being a public endowment or public trust. Therefore, prima facie, the plank of the argument of the learned senior counsel for the petitioners, as rested, upon Annexure P-3, that thereby there is an acceptance of the right of proprietorship of the petitioners over the disputed land, rather does not hold any vigour.

18. Moreover, though there are reflections in the wazib-ul-arz, thus exemplificatory qua the offerings made at the shrine, being amenable to be distributed equally amongst the biswasidars concerned. However, only the photocopy of the said wazib-ul-arz has been placed on record. Moreover, the photocopy of the said wazib-ul-arz relates respectively to the year 1939-40, thus is made prior to the year 1950. However, the jamabandis drawn subsequent to the said years, and, as are appended to the writ petition as Annexure R3/4-T, Annexure R3/5-T, Annexure R3/6-T, and, Annexure R3/7-T, rather carry, in the column of ownership thereof, thus reflections of Shamlat Patti 12 Biswas, and, in the column of cultivation thereof, the disputed shrine becomes described as Rafai-aam, thus the disputed shrine, obviously is spoken to become meant for the benefit of the entire village community. The import of the entry of Rafai-aam, and/or for the benefit of the general public, is that, the disputed shrine was meant for the worship by all the pilgrims, and/or the said entry is infused with an element of *animus dedicandi*. Therefore, the disputed shrine becomes a public trust, and,

whereons there is no exclusivity of right, title and interest of any member of

the village proprietary body. Contrarily, the element of animus dedicandi infusing the disputed shrine clearly, is manifestative, that the erstwhile managing committee or the erstwhile managing body of the temple, was in existence rather merely for ensuring the carrying(s) of rituals and other necessary observances, thus in terms of the tenets of Hindu religion. The import of the said entry, is also that, thereby the apposite wazib-ul-arz, as also the import of Annexure P-3, does thereby become completely effaced.

19. The further import of the above entry, given it not being disputed nor thus becoming challenged, is that, thereby it acquires conclusivity, thereby the petitioners cannot claim themselves to be also the Mahants of the disputed shrine. In consequence, the reliance, as made by the learned senior counsel for the petitioners, upon, the judgments (supra), respectively relating to a Mahant of a Hindu religious Matth, or declared priests of a Hindu temple, thus becoming vested with exclusive right of Mahantship at the Hindu shrine, or as Priests of a Hindu shrine, thus is not amenable for becoming ably canvassed by the petitioners nor they can claim themselves, thus to be either Mahants or Shebait of the Hindu idol inside the disputed shrine.

20. Though the Hindu idol is a minor, and, requires a Shebait for managing its affairs. Nonetheless, the management of the affairs of the Hindu idol inside the disputed Hindu shrine, does relate to the daily observances thereto, thus of sacred rituals, rather in terms of the Hindu tenets.

21. Now, even if the said observances of rituals or offerings to the Hindu deities inside the disputed Hindu shrine, are ensured to be managed by the erstwhile committee, and/or are managed through a priest appointed

for the said purposes. However, the said management(s) hence for ensuring

the makings of offerings to the Hindu idol inside the disputed shrine, thus through a priest appointed for the relevant purpose, yet to the considered mind of this Court, does not invest in the erstwhile management committee, thus the role of Shebait(s) of the Hindu idol inside the disputed Hindu shrine. The reason being that an undisputed entry exists in the revenue records, thus depicting the disputed Hindu shrine to be dedicated to the entire community, especially when thereby it becomes infused for reasons (supra), with the element of *animus dedicandi*. Moreover, when there is no entry in the revenue records about the Shebait(s) of the Hindu idol inside the disputed Hindu shrine or when there is a declaratory decree pronouncing that certain Shebait(s) are declared to be managing the affairs of the Hindu dieties inside the Hindu shrine. Resultantly, the erstwhile management (supra) of the affairs of the Hindu idol inside the disputed Hindu shrine, thus by a management committee, is to be concluded to be so done by the members of the committee concerned, thus not as Shebait(s) thereof. Consequently, when in the judgments (supra), the office of Mahant has been declared to be also an incorporeal right, and, the said office being not amenable to become snatched, except in accordance with law. However, when the predominant reason (supra), which prevails upon this Court to conclude, that there was no such Mahant appointed for the disputed Hindu shrine, thereby none of the members of the village proprietary body, who otherwise claim themselves to be the owners of the disputed shrine, thus can claim themselves to be the Mahants of the temple.

22. Though Article 26 of the Constitution of India preserves in a religious denomination the fundamental right to (a) establish and maintain institutions for religious and charitable purposes, (b) to manage its own affairs in matters of religion, (c) to own and acquire movable and immovable

property and (d) to administer such property in accordance with law. However, said invested fundamental right to a religious denomination is subject to public order, morality, and, health. Furthermore, the said fundamental right is also subject to without assessment of compensation qua the proprietors of the shrine, thus the administration, and, maintenance of the shrine, becoming not expropriated, by the State, through the makings of the apposite legislation. Since the impugned legislation is made with a laudable object to ensure purveying of better amenities, and, facilities to the pilgrims, and, devotees visiting the Hindu shrine. Therefore, when the above laudable object falls within the above expostulations embodied in Article 26 of the Constitution of India. Thus, the impugned legislation is not violative of Article 26 of the Constitution of India. Moreover, when for all the reasons (supra), the petitioners are not the proprietors of the disputed Hindu shrine, therefore, without determination of the compensation qua them in the impugned legislation also, the said legislation does not suffer from any constitutional defect.

23. The notable laudable object qua the enactment of the impugned legislation is apart from (supra), to also facilitate the advancement of studies in Hindu scriptures, through the establishment of schools qua the relevant purposes. The above laudable purpose, is also in alignment with the judgment made by a Constitutional Bench of the Hon'ble Apex Court, in ***The Commissioner, Hindu Religious Endowments, Madras***'s case, wherein it has been declared, that the stewardship of the Hindu shrine which is now entrusted to the governing body, as contemplated in the relevant statutory provisions, thereby the said governing body, thus in enhancing the laudable object (supra), is to but obviously also foster spiritual training by maintenance of a competent line of teachers, to impart religious instructions

to the disciples and followers of the Hindu religion. Resultantly, thereby all the schools to be established by the State, thus for imparting teaching of Hindu texts, to the enrolled therein students, reiteratedly does concur with the expostulations made in the judgment (supra), by the Constitutional Bench of the Hon'ble Apex Court.

24. Emphasizingly also when in terms of Annexure P-3, the Purohits or the Brahmins performing priestly duties at the shrine concerned, have not been assigned any right to seek apportionments amongst themselves of the income, derived in the shape of offerings made at the Hindu shrine. Resultantly the priests performing the priestly duties at the Hindu shrine, cannot also claim, that in terms of the apposite provisions contained in the Act of 1991, thus the income or the offerings made at the Hindu shrine, be determined, qua them in the manner, contemplated in the impugned legislation.

25. Though, in the judgment rendered by the Hon'ble Apex Court in *Bhuri Nath and others versus State of J&K and others, (1997)2 Supreme Court Cases 745*, and, in the judgment rendered by this Court in case titled as *Shri Mata Mansa Devi Temple through Pandit Chhattar Pal, hereditary Pujari and others versus The State of Haryana and others*, to which *CWP No. 14195 of 1991*, is assigned, an expostulation has been made, about the vires of the statute(s), as became impugned therein, statute(s) whereofs, do carry, thus provisions but alike the ones, as are engrafted in the impugned enactment before this Court, therefore the constitutional vires of the impugned statute, thus is also infused with an aura of constitutionality. However, in the judgments (supra), except for a discussion being made with respect to the creation of compensatory mechanism qua deprivation of income, accruing to the Pujaris at the shrines

concerned, whose management became taken over by the Governments concerned, through the enactment of the apposite legislation, there is rather no discussion about the tenability or otherwise of any purported untenable expropriated rights of any purported owner of the disputed Hindu shrine. Therefore, the judgments (supra) are of no aid to the learned counsel for the petitioners to thus canvass the above submissions before this Court. Emphasizingly when for reasons (supra), this Court has concluded, that the disputed shrine is a public trust, and, the petitioners are not the proprietors in the disputed Hindu shrine.

Final Order

26. In summa, this Court does not find any merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned annexures are maintained and affirmed.

27. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 29th, 2023

Gurpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No