

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 22nd December, 2016.**

+ **TEST.CAS.4/2007**

JAGDISH PRASAD

..... Petitioner

Through: Mr. Rajesh Rai and Mr. Rishi Kumar,
Advs.

Versus

STATE

..... Respondent

Through: Mr. Sanjeev Kumar and Mr. Surendra
Bhati, Advs. for objector Pujya Sadhvi
Shantanand Smarak Samiti.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Sections 276 & 278 of the Indian Succession Act, 1925 was filed seeking probate of a document dated 9th February, 1982 stated to be the validly executed last Will of Mata Shantanand who died on 13th November, 1984.

2. It was *inter alia* pleaded in the petition (i) that Mata Shantanand was in occupation of property bearing No.204, Block No.7, Jheel Khureji Geeta Colony, Delhi since 1950; in the year 1951-52, she constructed a residence for herself “and also on the ground floor constructed a temple”; (ii) that transfer of the said property was made in favour of Mata Shantanand by Government of India, Ministry of Works, Housing and Rehabilitation on 26th

December, 1956; (iii) that Mata Shantanand continued to reside in the said property and performed *Pooja* all by herself; (iv) that due to advancing age and ill health, she in the year 1980-81, appointed the petitioner Mr. Jagdish Prasad as *Pujari* and also provided accommodation to the petitioner in the premises; (v) that Mata Shantanand executed a Will dated 9th February, 1982 stating that she had no legal heir and that the petitioner herein only was looking after her and taking care of the temple and performing *Pooja* therein and expressed her desire that upon her demise, the property bearing No.7/204, Geeta Colony, Delhi would go in favour of petitioner; “it is very much clear that the Mandir stands bequeathed in favour of the petitioner Sh. Jagdish Prasad Goswami after her death”; (vi) that “all the original documents pertaining to the property including the Will in a cover were handed over to the petitioner by Mata Shantanand in a ceremony in presence of all the devotees”; (vii) that the deceased left no other legal heir or relation to the best of the knowledge of the petitioner; (viii) that the property subject matter of Will is situated within the jurisdiction of this Court; (ix) that the value of the property is Rs.20,25,000/-; (x) that no other application had been made in any Court of law for grant of probate regarding Will or letter of administration of the property left by Mata Shantanand; (xi) that though the

petitioner is residing in the property since 1980-81 without any interruption but since some neighbours in the area claiming to be part and parcel of the temple have been threatening to dispossess the petitioner, the petitioner had filed a suit for permanent injunction in the Court of Civil Judge, Delhi and in which interim protection had been granted.

3. Needless to state that in view of the pleadings aforesaid, except for the “State” no other person was impleaded as respondent or as close relative or having caveatable interest to the petition.

4. The petition was entertained and notice and citation thereof issued in the newspaper ‘Statesman’ (New Delhi Edition). No objections were filed by anyone and the petitioner led *ex-parte* evidence.

5. Vide judgement dated 5th May, 2008, the petition was dismissed holding that the petitioner had failed to prove in accordance with law the document dated 9th February, 1982 of which probate as Will was sought.

6. The petitioner preferred FAO(OS) No.355/2008 which was allowed vide judgment dated 3rd March, 2015 and the petition restored for adjudication afresh on merits in accordance with law as discussed in the judgment of the Division Bench.

7. On remand, before this Bench, on 22nd September, 2015, the counsel

for one Pujya Sadhvi Shantanand Smarak Samiti (Regd.) (PSSSS) appeared and stated that objections were being filed; opportunity was given to the counsel for the petitioner to file reply thereto.

8. PSSSS in its objections has pleaded (a) that PSSSS is a registered Society under the Societies Registration Act and has control and supervision of Mata Shantanand Shri Radha Krishan Mandir; (b) that earlier, the temple was being looked after and maintained by local residents and unregistered committee; (c) that in the year 1955, Shri Radha Krishan Mandir was founded by Mata Shantanand on the land / plot allotted by Government; the leasehold amount was deposited by the devotees and construction was raised by taking donations; (d) that Mata Shantanand was looking after and maintaining the temple with devotees and public till 1984, when she expired; (e) that Mata Shantanand, before her death, authorised and appointed Smt. Krishna Wanti to look after and maintain the temple in place of Mata Shantanand; (f) that in the year 1990, due to some family burden, Smt. Krishna Wanti could not maintain and look after the temple properly and one Mr. Murlidhar was appointed to perform the duties of *Pujari* in the temple and was so performing the duties till February, 1994; (g) that thereafter other *Pujaris* Mr. Ramveer, who worked for 2-3 months and Mr. Shyam Sunder

who worked from 15th May, 1994 to 20th March, 1995 were appointed; (h) that on 2nd October, 1996, the devotees and residents of the locality formed a new Managing Committee to look after and maintain the temple and its property; (i) that in the month of December, 1996, petitioner approached the Executive Committee and offered himself to perform the duties of a *Pujari* in the temple and submitted an application and was on 15th December, 1996 appointed as the *Pujari*—at that time only ground floor of the temple was in existence; (j) that in February, 1997, Smt. Krishan Wanti paid a sum of Rs.50,000/- to the Committee of the temple for renovation of temple premises and the ground floor of the temple was renovated; (k) that in the year 1998, PSSSS and the devotees arranged for donations and constructed a big hall on the first floor above the temple, as a Dharmashala for use of marriages, Sagai, meetings, functions, Tehrvi etc. and since then the hall is being used for the said purpose; (l) that in the year 1999, PSSSS, again from donations, constructed two rooms, one kitchen and bathroom on the second floor of the temple; (m) that the petitioner requested PSSSS to provide him one room on the second floor of the temple for his residence to bring his wife and children to Delhi and PSSSS provided one room and kitchen to the petitioner on a licence basis; (n) that the petitioner came to reside on the

second floor in this fashion; (o) that in the year, 2003-2004 another room and some other construction was made on the second floor of the temple; (p) that the petitioner is in possession of only one room and kitchen on the second floor of the temple and the remaining property is in possession of PSSSS; (q) that in the year 2005, PSSSS received complaints against the petitioner and asked the petitioner to leave; (r) that the petitioner first filed the suit for injunction and thereafter the present proceeding; (s) that the document dated 9th February, 1982 of which probate as Will of Mata Shantanand is sought is not executed by Mata Shantanand; and (t) that Mata Shantanand executed a registered Will on 24th May, 1982 in favour of Baba Rajnath and Mr. Khairati Lal but on 17th September, 1982 registered the cancellation of the Will registered on 24th May, 1982.

9. The petitioner in his reply to the objections has *inter alia* pleaded (i) that Baba Rajnath and Mr. Khairati Lal took advantage of the old age of Mata Shantanand to get the Will dated 24th May, 1982 registered; (ii) that however in the said Will, Mata Shantanand did not mention that the Will dated 9th February, 1982 in favour of the petitioner was cancelled; (iii) that when Mata Shantanand came to know of the deceit practised on her in having a Will registered on 24th May, 1982, she, on 17th September, 1982

registered cancellation thereof; (iv) that PSSSS came into existence only in the year 2007; “further, no society by this name or in any other name was constituted by the owner of the temple i.e. Mata Shantanand and the present society is nothing but a group of self proclaimed office bearers of the society who are trying to grab this temple property for their ulterior motives”; (v) that “in the year 2006, Mr. Radhe Shyam, Mr. Satpal Sehgal and Mr. Shrawan dispossessed the petitioner from ground floor and first floor. The ground floor is temple in the property bearing No.7/204, Geeta Colony, Delhi and first floor is the hall made for public gatherings”; and, (vi) that vide order dated 27th July, 2006 in the suit for injunction filed by the petitioner before the Civil Judge, the said Mr. Radhe Shyam, Mr. Satpal Sehgal and Mr. Shrawan have been restrained from dispossessing the petitioner from the second floor of the property.

10. Though a rejoinder has been filed by PSSSS to the reply of the petitioner to the objections but need to refer thereto is not felt.

11. On 16th December, 2016, the following order was passed:

“1. This matter was listed on 8th November, 2016 for framing of issues. Upon neither party proposing any issues, the file was directed to be kept in Chamber for framing of issues.

2. However, on perusal of the file, it was felt that there is no need for framing of issues. Hence, the matter was directed to

be listed for today to enable the counsels to address on the said aspect.

3. The petitioner has filed this petition seeking probate of a document dated 9th February, 1982 stated to be the validly executed last Will of Mata Shantanand. The said Will is with respect to a temple constructed on property No.204, Block-7, Jheel Khureji Geeta Colony, Delhi. The petitioner claims to be the caretaker of the deceased and the temple and is residing on the second floor above the temple.

4. Objections have been filed on behalf of Pujya Sadhavi Shanta Nand Samarak Samiti (Regd.) claiming the property of the temple to be belonging to it and claiming to be in management of the temple and the first floor above the temple. It is further its case that petitioner is in unauthorised occupation of the second floor.

5. The possession of objector of ground and first floor is admitted by the petitioner as well.

6. I have enquired from the counsel for the petitioner as to what is the document of title of the property in favour of deceased.

7. The counsel for the petitioner states that neither party has filed any document of title and there is only a house tax receipt in the name of the deceased.

8. It thus appears that the dispute between the parties is a title dispute and when civil proceedings between the parties are already pending adjudication, no purpose will be served by entertaining this petition inasmuch as the question of the Will can also be adjudicated by the Civil Court, where the dispute regarding title of property is pending.

9. The counsel for the petitioner to inform the counsel for the objector of the next date of hearing.

10. List on 21st December, 2016."

and thereafter on 21st December, 2016, the following order was passed:

“1. This order is in continuation of the order dated 16th December, 2016.

2. The counsel for the petitioner has today in Court handed over photocopy of the lease deed dated 30th December, 1966 of the land underneath the property executed by the President of India in favour of deceased Smt. Shanta Nand.

3. Therefrom, it appears that the property was the private property of Smt. Shanta Nand.

4. However the counsel for the petitioner as well as the counsel for the objector Pujya Sadhavi Shanta Nand Samarak Samiti (Regd.) agree that the temple existing on the property is a ‘public temple’, ‘open to the members of the public’. While the counsel for the petitioner Jagdish Prasad states that the temple was constructed by Smt. Shanta Nand, the counsel for the objector Pujya Sadhavi Shanta Nand Samarak Samiti (Regd.) states that the cost of construction of the temple was borne by the residents of the locality for whose benefit the said temple was constructed.

5. It is further the case of the objector Pujya Sadhavi Shanta Nand Samarak Samiti (Regd.) that it is the objector only which has throughout been managing the temple including the floors above the temple and it is the objector only which had appointed the petitioner Jagdish Prasad as the pujari of the temple and permitted him to reside on the second floor of the property.

6. Once it is the admitted position that the temple existing on the property is a ‘public temple’, in my opinion, the same ceases to be the property of Smt. Shanta Nand for Mata Shanta Nand to make a Will or bequest thereof in favour of anyone or in favour of the petitioner Jagdish Prasad.

7. The said public temple would be a public charity within the meaning of Section 92 of the CPC and since there appears to be a dispute as to the administration thereof, this Court under Section 92 of the CPC will form a scheme for management thereof and issue appropriate directions.

8. The plaintiff cannot appropriate any part of the property

of such public charity unto himself and cannot make his residence on the second floor of the property and is liable to be ejected therefrom.

9. *On request of counsel for the petitioner, list tomorrow i.e. 22nd December, 2016.”*

12. Today, neither counsel has made any submissions. I have considered, whether the present petition is to be proceeded with further by framing issues and putting it to trial.

13. The document of which probate as Will of Mata Shantanand is claimed in this petition is only with respect to property No. 204, Block No.7, Jheel Khureji Geeta Colony, Delhi and with respect to no other estate of the deceased. Though in a petition seeking probate of a document claimed to be a Will, the Probate Court is not to investigate the existence or title to the property bequeathed or purported to be bequeathed under the document claimed to be the Will (see ***Krishna Kumar Birla Vs. Rajindra Singh Lodha*** (2008) 4 SCC 300) but in the present case, the petitioner also as aforesaid admits that at least the ground floor and first floor, if not also part of the second floor of the property, are being used as a public temple / public property.

14. Though the photocopy of the lease deed of the land underneath the property handed over on 21st December, 2016 shows the grant of leasehold

rights in the land underneath the property in favour of the deceased Mata Shantanand only and though the said lease does not state that the same is for the purposes of a temple or for religious purposes but it is not as if, without the same, the property could not have been converted from private property of Mata Shantanand to a public temple. The fact that the temple existing on the property is a public temple has not only been expressly admitted by the counsel for the petitioner as recorded in the orders dated 16th & 21st December, 2016 reproduced above but is also admitted in the pleadings as quoted verbatim in the narrative above. The petitioner, in affidavit by way of examination-in-chief in his *ex-parte* evidence recorded prior to remand by the Division Bench also, deposed on the same lines.

15. Supreme Court in ***Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas*** (1969) 2 SCC 853 was concerned with the character of the properties subject matter of that proceeding viz. whether they were properties of a public trust arising from dedication of those properties in favour of the deity or whether the deity as well as the properties were private properties. It was held (i) that it is a common feature of the temples, in that case belonging to the Vallabha Sampardaees, that the ground-floor is used as the place of worship and the first floor as the residence of the *Pujari*; (ii) that

the fact that the temple had the appearance of a residential house does not in any manner militate against the contention that the temple in question is a public temple; (iii) that though most of the present day Hindu public temples have been found as public temples, there are instances of private temples becoming public temples in course of time; (iv) the factors, whether the members of the public are entitled to worship in the temple as a matter of right, are the temple expenses met from the contributions made by the public, whether the sevas and utsavas conducted in the temple are those usually conducted in public temples, have the management as well as the devotees been treating the temple as a public temple, are relevant factors in determining whether a private temple has acquired the status of a public temple; (v) that the fact that the temple subject matter of that proceeding was attracting a large number of devotees and that Utsavas and other festivals were being performed in the temple on a reasonably grand scale, the devotees as well as the *Pujaries* were treating the temple as a public temple, were held to be decisive in determining the property in question as being a public property. Finding that the other properties, besides the temple were also being used for the purposes of the temple and that the monies spent thereon and earned therefrom were being used for the purposes of the

temple, the said properties were also held to be properties of the temple.

16. Similarly, in *Pratapsinhji N. Desai Vs. Deputy Charity Commissioner, Gujarat* 1987 (Supp.) SCC 714 it was held (i) that in the absence of a written grant, the question whether an endowment made by a private individual is a public endowment or a private one is a mixed question of fact and law and the scope of dedication must be determined on the application of legal concepts of a public and private endowment to the facts found in each case; (ii) determination has to be done in the context of origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received, the rights exercised by the devotees in regard to worship therein etc.; (iii) that merely because a person has throughout been in management of the temple does not come in the way of the temple being held to be public temple if it has been throughout treated so; (iv) that if the founder held out the temple to be a public one, inference of dedication to public would be justified; (iv) that endowment is dedication of property for purposes of religion or charity; a trust in the sense in which the expression is used in English law is unknown in the Hindu system, pure and simple; (v) that Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institutions of every kind and for all

purposes considered meritorious in the Hindu social and religious system; (vi) that under the Hindu law, the image of a deity of the Hindu pantheon is, as has been aptly called, a 'juristic entity', vested with the capacity of receiving gifts and holding property; (vii) that the Hindu law recognises dedications for the establishment of the image of a deity and for maintenance and worship thereof; (viii) that the property so dedicated to a pious purpose is placed extra-commercium and is entitled to special protection at the hands of the Sovereign whose duty it is to intervene to prevent fraud and waste in dealing with religious endowments; (ix) that the essence of a public endowment consists in its being dedicated to the public; (x) that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as only the members of the family i.e. an ascertained group of individuals can pray therein—but where the beneficiaries are not the members of a family or specified individuals but the public at large, then the endowment can only be regarded as public, intended to benefit the general body of worshippers; (xi) that whether a temple is a private or a public temple, depends on whether the public at large had an unrestricted right of worship therein.

17. The same view was reiterated in *Kapoor Chand Vs. Ganesh Dutt*

1993 Supp. (4) SCC 432 and in *Bala Shankar Maha Shanker Bhattjee Vs. Charity Commissioner, Gujarat State* 1995 Supp. (1) SCC 485. In the former it was also held that worshippers have a right to have a transfer by the Manager of the immovable property comprised in a Hindu religious or charitable endowment set aside and in the latter it was also held that a property endowed to an idol vests in the idol but the idol has no beneficial interest in the endowment—the beneficiaries are the worshippers.

18. Thus, the fact that the petitioner has shown the grant of perpetual lease of the land underneath the property to be in the name of Mata Shantanand, probate of a Will claimed to have been made by whom is sought in this proceeding cannot, when the petitioner on the other hand admits the temple constructed on the said land to be a public temple, mean that Mata Shantanand on the date of making of the alleged Will was in a position to make a Will with respect to the said property. The petitioner, in the pleadings and in the evidence as recorded above and expressly during the hearings as aforesaid, admitted the property to be a public temple. The petitioner has thereby admitted to Mata Shantanand having endowed the land of which leasehold rights were granted in her favour and also the temple, even if constructed by her thereon. The said property thus ceased to be her

private property and she ceased to have rights as an owner therein.

19. Once it is so, even if the document dated 9th February, 1982 is held to be the validly executed last Will of Mata Shantanand, the same would not vest any rights in the petitioner in the property, inasmuch as, as per the admissions of the petitioner himself, Mata Shantanand, on the date of making of the alleged Will, was left with no rights in the said property.

20. I am thus of the view that no purpose would be served in proceeding further with this petition. It is settled principle of law that the Court will not allow its time to be wasted in proceedings result whereof is not to serve any purpose.

21. Though PSSSS has filed objections as aforesaid but it is deemed appropriate to direct the Administrator General, Delhi constituted under the Administrators General Act, 1963 to investigate the matter and to, if finds breach of any express or constructive trust created for public purpose of a charitable or religious nature with respect to the said property, to take appropriate action with respect thereto, including under Section 92 of the Code of Civil Procedure, 1908. I may in this regard notice that the counsel for PSSSS has in Court also handed over a copy of the order dated 20th/23rd December, 2013 of the Government of India, Ministry of Urban

Development, Land and Development Office in pursuance to the order dated 15th February, 2013 in FAO(OS) No.355/2008 aforesaid holding that neither the petitioner nor PSSSS have any right to the said property and since the allottee of the said property had died intestate, without leaving any legal heir or administrator, the property had vested back in the Government by escheat. However, neither counsel informed the further proceedings, if any in pursuance to the said order.

22. The petition is disposed of in terms of above.

23. A copy of this order be forwarded to the Administrator General, Delhi as well as to Government of India, Ministry of Urban Development, Land and Development Office, Nirman Bhawan, New Delhi.

RAJIV SAHAI ENDLAW, J.

DECEMBER 22, 2016

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(corrected & released on 11th January, 2017)